A DISCOVRSE OF THE STATE ECCLESIASTICALL OF THIS Kingdome, in relation to the Civill.

Considered under three CONCLUSIONS.

With a DIGRESSION, discussing *some ordinary Exceptions against* Ecclesiasticall Officers.

BY C. D.

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TO THE RIGHT HONOURABLE WILLIAM EALRE

Of *Salisbury*, Viſcount *Cranburne*, Lord *Cecyll* of *Eſendon*, Knight of the moſt Illuſtrous order of the Garter, and one of his Majeſties moſt honourable Privie Councell.

MAY It pleaſe your honour to accept this preſent diſcourſe as an acknowledgment of your Lordſhips favour toward

your obſervant Chaplaine,

Calybute Downinge.

ERRATA.

PAge 8. marg. *for* text, *read* tit. *p.* 15. marg. Clayman, *r.* Clapmar. *p.* 17. *l.* 15. with ſtate, *r.* with the ſtate. *p.* 21. *l.* 28. *ſic ſtantibus, r. exſtantibus p.* 35. *l.* 18. *ordinar. r. ordinario. p.* 39. *l.* 1. adde *à ſarlo. p.* ib. *Angliterra, r. Anghilterra. p.* 52. *l.* ib. 506. *r.* 56. *p.* 54. marg. *Hallandes affaires. p.* 55. *l.* 8. Common, *r.* Cannon Law. *p.* 57. *l.* 18. *Conatus, r. Canutus. p.* 59. marg. *Francum, r. ararium. p.* 67. *l.* 24. *vacante prudentiſſimus, r. vacante; ſed prudentiſſimus. p.* 94. *l. vlt.* dele Othobone vpon.

CONCLVSION I.

That the preſent State Eccleſiaſticall is moſt conuenient, and beſt agreeing with the Civill.

With what care and coſt States and Kingdomes, which vphold and deriue all happineſſe to man, as he is a ſociable and a feeble creature, ſhould be preſerved, none will deny; eſpecially ſince they are ſo ſubiect to decay, and the cauſes of their corruptions ſo many. For the beſt tempered common-wealth is not of any conſtant continuance, but full of changes, and thoſe at laſt, will after much interchange, driue it to a full and fatall period. It muſt therefore be the care of the preſent age, to ſee that it receiue no detriment while they are in it: for they may be ſo orderly, as to worke no diſtemper, but conſerue it in health and wealth, or at leaſt keepe it from decaying ſo faſt, that hauing ſome ſpace to fall in, it may recouer, or they haue time to leaue it, and not fall with it, nor that fall vpon them. Now the beſt, and all that the paſſing, preſent generation can doe, is either to keep things in primitiue order, or to reforme them to it. The firſt of which is difficult to continue, the other dangerous if long diſcontinued. Yet Kingdomes muſt be conſerued, *Senec. Epiſt. 117.*

ſerved, by the ſame meanes they were firſt eſtabliſhed. This labour, and care then will be to beſt purpoſe beſtowed vpon thoſe parts which are moſt neceſſary, and vphold the reſt as eſſentiall and fundamentall, being the principles of the intrinſicall, originall good: *Δύο ἀρχαὶ παίσης πολιτείας ἔθη καὶ νόμοι*, or vpon thoſe that ſecure theſe, *δυοῖν γὰρ ὄντων δι' ὧν σώζεται πολίτευμα πᾶν*. Now that which is the only infallible ground of theſe, muſt needs be principally reſpected by thoſe that are vndertakers for the publick good; and that ground is true religion. For though ill manners are *per accidens* the cauſe, or rather the occaſion of making good lawes, yet they are better in the executing, beſt when they are obeyed. Now good manners cauſe obedience, and religion naturally begets good manners. But religion cannot ſubſiſt without publicke exerciſe and action, and ſo the requiſites of it are times, places, and ſome perſons who ought to be ſet apart, and wholly and only employed in it; and they muſt be in the common-wealth. Therefore ſeeing it is neceſſary to haue a religion to preſerue the common-wealth, it is by conſequent as needfull, to haue preſervers of religion, that may not overturne the common-wealth by over-ruling religion. Wherefore the choyſe of them need to be ſuch, that ſeeing they muſt be in the common-wealth of neceſsity, they may be of the common-wealth for vniverſal ſafety. And yet they are to be diſtinguiſhed by ſtate, and order, to avoyd confuſion; nor doth their diſtinction enforce any ſuch forme, after which they muſt governe, as may be inconvenient to the publicke civill ſtate, wherby they are to be governed. The care then of the wiſeſt muſt be either to preſerue, or reſtore that forme of the Clergie, which is moſt agreeing with the Civill State, and that will be the meanes to prolong the age of the ſtate, by preſerving concord amongſt ſocieties; which, though at laſt it come to an end, yet it may out-laſt our dayes, that

Polybius hiſt. lib. 6.

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we be not vnhappy in the ruine; for it is not the infelicitie of States which haue long flouriſhed to decay, or be deſtroyed, but the vnhappineſſe of thoſe men, whoſe hap it is then to liue, and not when they did flouriſh. Now every form of a Clergie will not fit, but according to divers countries, they haue beene ſeverall, ſuiting to the times, places, and people. The firſt was the originall, domeſticall diſcipline in private families, before God made choyſe, and actually ſeperated a nation to himſelfe. Then followed the Leviticall Nationall regiment, compounded and compoſed of, and according to the ceremoniall and judiciall Lawes. Both theſe formes were not onely by divine permiſsion, but alſo by injunction; yet not perpetuall nor vniverſall. Neither of theſe then are the government wee muſt chuſe, becauſe that manner of exerciſing religion is antiquated. Wee muſt then conſider of a forme, which may be conformable to the preſent practiſe of true religion, in relation to Gods revealed Will, which may withall be ſuitable, and ſorting with this preſent ſtate, that ſo they may vphold each other; which forme, though it be not according to Gods expreſſe mandate in ſome particulars, yet it is not againſt it, but with his permiſsion of approbation in all points. Now in this choyce, wee muſt conſider our owne forme of Civill government, and whether that were impoſed vpon vs by conqueſt, or by our owne conſent; if by free conſent, and of long continuance, it will with more eaſe and deſire be preſerved, and with greateſt danger altered; if by conqueſt, the more Charters of priuiledges are granted to vs vnder it, the more it is endeared to vs, and eſteemed happy; but our forme of ſtate is a free Monarchie, erected and protected by free conſent, and of long continuance, not impoſed but confirmed and reformed to the firſt freedome by a happy conqueſt, and endeered vnto vs by many Charters of wholſome priviledges.

Guiccardine hypommeſes pol. 141.

Therefore we muſt ſeeke or keepe ſuch a forme of ſtate Eccleſiaſticall, as may beſt accord with our forme of Civill policie,

§. 2. This preſent State Eccleſiaſticall is the forme that beſt agrees with the Civill State. That it is not againſt the Law of God, I will not goe about to proue, becauſe I hope none will queſtion it: neither that it was the primitiue, and ſhould ſtill be the government of the preſent viſible Church, becauſe that is already proved without all contradiction by many moſt judicious and orthodoxe Diuines: But my vndertaking is (as farre as God ſhall giue mee vnderſtanding) to diſcourſe, how it is moſt agreeable with this Kingdome. All States haue alwayes endeavoured, as to haue a religion, ſo to frame the exerciſe of it according to their owne diſpoſitions: but ſome with more doting indulgence, haue at laſt changed it into that which they were moſt naturally diſpoſed to, and did not alter and order their inclinations by it. As the foure grand Monarchies, the Chaldean with whom the Perſian may well be joyned, theſe turned the acts of religion into philoſophicall conſiderations, enquiries, and explications of nature. The Egyptians (a principall branch of theſe Monarchies, and from whom ſome thinke the Chaldeans were derived, and that *Belus Neptuni Libiaque filius in Babyloniam colonos ex Ægypto traduxiſſet, & ex iis Sacerdotes quos Chaldeos Babylonii vocant, qui more Ægyptiorum aſtra obſervant, &c.*) Theſe Egyptians naturally Δεισιδαίμονες, μυστηριακοὶ, ſuperſtitious in religion, curious in myſteries, transformed religion into all kinde of ſuperſtitions, and by trying concluſions and chymicall experiments vpon it, conceited the ſubſtance of it into vnexpected phanſies, furthered by mimicall expreſsions, leading into, and leaving in myſticall mazes. The Grecians by nature Νοήμονες ἑυρετικοὶ καὶ φιλόνικοι, intelligent, able to find out, and loving to contend, drew religion into

Diodorus Siculus Biblioth. lib. 1.

into disputes, and would beleeue no more than they could finde out by search of reason, and apprehend by force of fansie; and that they obstinately maintained, by a wanton working wit, which they might with more ease doe, seeing their language was so happy for expression. The Romans by nature inclined to dominion, fitted the frame of their religion to a Monarchicall forme vnder the Pontifices; yet they seemed to seeke a Monopolie of all the Gods in the world: (for they receiued and worshipped the Gods of all the nations they conquered.) These nations framing religion to these ends, had a forme of government, vnder religious persons, sutable to further, contriue, and compasse by all meanes, their particular purposes, and therefore they gaue them power, of a most large extent, yea they were ruled by them; for the Chaldeans were originally Priests, and Αγχίπολι χρόνον συχνὸν τῶν ἱερέων ἐβασιλεύθησαν a priest, and a Prince were all one with them. So the Magi amongst the Persians, the Priests of *Apollo* at *Delphos* amongst the Grecians did what they would. And the Romans were led by their Pontifices and Augures, but it was whither they would, namely to a Monarchy. Wee having not the ends of these nations in our religion, must not vie the same forme of Clergie. For I conceiue the ayme of the best and wisest with vs, is to preserue the Church and Common-wealth together. Now that cannot be, where the state of the Clergie governs, but where it is governed. Our ayme being such, let vs consider what forme will be best-governed vnder this Common-wealth. There are but three distinct formes of Ecclesiasticall government in Christendome, as the Monarchicall, Aristocraticall, Democraticall; of these, the Aristocraticall is most conformable to the rule of this Realme. In proving of which assertion, I will not onely insist vpon the proofe of past and present experience, that it is so, but discourse in reason

Cujacius de Origin. I. Ciuilis, §. 12.

Augustinus de Ciuit Dei, lib. 20. cap. 12.

Synesius epist. 126.

Pomponius de Orig. I. Ciuilis.

why it ſhould be ſo. And firſt in oppoſition to the other formes of Eccleſiaſticall government: what they are likely to produce, woefull experience hath long ſince felt in the one, and what we may expect, vpon probable conjecture, from the other, is not to be deſired by any that vnderſtand, and loue the happineſſe of this Civill State. For all their principles, fundamentall in their grounds, of augmentation in their growth, of conſervation in their heigth, and of reparation in their decayes are moſt dangerous for this Monarchy, and the cauſes of their corruption would be ſo incorporated into the body and bowels of the Civill State, that if it fall not before them and into their hands, they would goe neere to pull it downe with them when they fall. Not ſo ſpeake of their power, which they muſt haue, and the exerciſe of it, either in an ordinary and lawfull courſe, or by indulgence or vſurpation, and the manner of their proceedings in the execution of it, what inſtruments they vſe in counſell aud action, how much they trench vpon the power, vndermine the government, countermine the proceedings, countermand the edict, and confront a Monarchy, I leaue it to wiſe and actiue men to conſider.

φεν ἀζιματα τῆς πολιτείας. *Polybius lib. 6.*

§. 3. Firſt to ſpeake of the Monarchicall, which is now the Papall government. How this Monarchicall forme hath heretofore agreed with this State, all know; and it is not likely that it ſhould now ſo well accord with it, becauſe the reaſons of that little agreement then, the preſent particular intereſt, in which this State vſed that Monarchy, are ceaſed; for then wee aymed to enlarge our dominion by the right of ſucceſſion in France, by the right of conqueſt in Scotland and Ireland. But the cauſes of diſagreement ſtill remaine, and are in their part aggravated to an vtter oppoſition; ſo that as before it was dangerous, ſo now it is a deſperate caſe to re-entertaine that forme of Clergie, which can and will rule vs, and

muſt

muſt neceſſarily alter, and ſo worke the ruine of the preſent ſtate. Vnder this forme this Kingdome was no Monarchie, but a Province, vnder a forreiner, an vſurper and a tyrant. This was our beſt condition when that Clergie ruled vs, though as favourable as they could, or did any Monarchy in Europe. The lawes and priviledges of the land were continually broken and infringed by them, eſpecially thoſe lawes that did moſt immediatly vphold the Kings prerogatiue. Againſt them they continually promulgated particular edicts, for the decrees were too generall to be applyed to occaſions, and therefore they added the decretals, ſo called, becauſe they gaue wings to the decrees for quicker diſpatch. And wee ſhall finde, that moſt of the *Decretall* epiſtles, which concerne Iuriſdiction, were written to Engliſh Prelates. And (as I conceiue) ſome reaſon might be, becauſe the lawes of this land are more contrary to the Canon Law, than the lawes of any other States in Chriſtendome, being they are more ruled by the Civill Law, from which the Canon is derived, and ſo more cauſes might ariſe here amongſt vs, either out of the contrariety of the Lawes, or out of the narrower extent of the Common Law, and alſo partly out of the ignorance of the proceedings of this State, which was then likely to be moſt, becauſe intercourſe and intelligence with Rome for that time was abridged; (for *Henry* 2. being then at variance with *Thomas Becket*, who was ſheltered by the Pope *Alexander* the third, permitted not any Legate to reſide in the kingdome; but as ſoone as *Vivian* was arrived, he was queſtioned, and that by the Biſhops of Wincheſter and Ely, how hee durſt land without the Kings ſpeciall licence.) And partly they writ the oftner to Engliſh Biſhops, becauſe they ſuſpected them, and juſtly, to be more partiall for their Prince, than the Prelates of any other kingdome, as appeares by their readineſſe to examine this Legate, and alſo by an epiſtle

Duarenus de beneficijs Eccleſ. Proœmio.

Lib. 4. text. 17. cap. 7. qui filij legitimi. *Sarisburiensis de nugis curial. lib. 7. cap. 24.* epistle *Decretall* of *Alexander* the third to the Bishop of *London*, who then was *Gilbert Foliot* (a man much commended by *Mathew Paris* and *John Sarisburiensis*) in that epistle hee curries favour with him in a cause which hee knew was of Ecclesiasticall cognizance, and was so judged here in the Kings court, (as appeares out of *Glanvill* then Lord chiefe Iustice) I think in the very particular case. But he feared, seeing the Bishop could doe so much with the King, and would doe so much for his King, least hee should finde some way to entitle it to the Crowne: and hee had good reason to feare, since the Bishop had so often in the Kings behalfe opposed *Thomas Becket* and him. These may bee some reasons why the Popes sent so many epistles into *England*, and I am the more confirmed in them, because I finde they were for the greatest part written by the most Pragmaticall Popes, who busied and bestirred themselves most in setting up orders, and new fresh Fryes, and fraternities of Fryers; and in pulling downe the powers both of our Kings and Bishops: to wit, from those seaven Popes (who were the thirds; and I thinke the worst of their names, I am sure of their predecessors.) As for the most part they were written from *Alex. 3. Lucius tertius, Vrbanus tertius, Clemens tertius, Cœlestinus tertius, Innocens tertius*, and *Honorius tertius*; these men did and undid very much, because they were active and lived long. If then this forme of Clergie was thus prejudiciall to our state before it was opposed and incensed by the statute of *Proviso* and *Premunire*, and cast off by the Kings just re-assuming their power, (which shewes that all their right was nothing but our soveraignes wrong;) surely now wee are not to expect so much favour from them: and therefore as the State then thought it necessarie and right to cashiere it, and brought their purpose fully to passe; so it is now more necessary and just to keepe it out, since it is infi-

Glanvill, lib. 7. cap. 15. *Ad Regem Angliæ pertinet de possessionibus iudicare.* *Iohannes de Parisijs contra Bonifacium octavum. cap. 12.*

nitely

nitely increaſed in tyranny, ſince that unhappy, unadviſed, ill adviſed conventicle at *Trent*.

§. 4. Thoſe nations ſhall have the beſt uſe of that forme, who propound a civill ſtate as large as their Eccleſiaſticall; and to whom he hath firſt ſought too for aſſiſtance: and withall are able to overrule it. For after *Iuſtinianus* the laſt of the true *Roman* Emperours, and *Gregory* the laſt of the good Popes, that See claue to *Phocas*; who named the Pope Vniverſall Biſhop, that hee might proclaime him Catholique Emperour. But when in the next Centurie the Eaſterne Emperours were infeſted with *Saracens* warre, began to pull downe images as ſome cauſe of the warres, which the Pope endeavoured to ſet up againe: then by the ſecond Councell of *Nice*, whether becauſe they did him wrong in diſobedience, or rather becauſe they could doe him no good; the *Greeke* Pope *Zachary* fell off to the *French* before the next Centurie. And then *Pipin* uſed him to confirme, not to conferre his new atchived Kingdome; for in thoſe dayes they gave no ſuch power, neither did Pope *Zachary* claime it: for hee depoſed not *Childericke*, but conſented to the depoſing, which was by the Peeres of *France*; neither did he ſet up *Pipin* in his roome: but they that depoſed the other onely ſent to *Rome* to have *Zacharies* adviſe in it, becauſe it might paſſe more plauſibly in the world by the conſent of ſo grave an Oracle: as it hath alway beene good wiſedome to winde in the conſcience of one who is eſteemed an upright Iudge, for the countenance of an unuſuall cauſe humorouſly undertaken by the firſt Author; eſpecially there being then a faction amongſt the Biſhops of *France*: ſo that this inquirie of his judgement in point of fact did non ſubmit to any claime of right. And *Gotefridus Viterbrenſis* affirmes, and *Baronius* confeſſes, *Francos non Zachariæ paruiſſe decreto, ſed acquieviſſe conſilio*: and there is great difference betwixt an abſolute

Bulla quaſi Bulla ut ſuriſta.

Baronius Annal. Anno 750.

Baronius Annal. Anno 751.

injunction, and a politique adviſe, which is onely an anſwere out of diſcretion and left to diſcretion, implies no obligation of neceſſitie. But this is without queſtion, *Pipin* being ambitious of the Kingdome, and deſirous to cover and colour it with religious ends, uſed the Pope to countenance and compaſſe his deſigne; who would not withſtand him, being ingaged to him for protection and by bounty, or which is likelier, hee durſt not, being too much in his power. But howſoever it was, he clave faſt unto the *French* for that Century: eſpecially to *Charles* the great, the repairer of the Weſterne Empire; from whom the Caroline ſucceſſion continued till *Otho* the third. But then the *French* Kings being diſtracted by warres at home, could no more aſſiſt them: *Gregory* the fift an *Almaine* transferred it to the *Almaines*, chooſe thoſe ſeaven Electors, but they agreed not well together: after the *Almaine* Pope was dead and *Italians* ſucceeded, they preſently began to quarrell with the Emperour, and to ſend challenges of right into *Italy*; knowing that the Emperour was not able to doe much for them in giving them as the *French* had done, and perceiving hee was more unable to hold from them that which they would have: ſo that the Emperours were continually imbroiled by them, being not able to rule them, decreaſing as faſt as they roſe. Then the oppoſition betwixt many particular Popes and Emperours, as betwixt *Gregory* the ſeaventh and *Henry* the fourth, and *Alexander* the third with *Fredericke Barbaroſſa*, was very ſtrong. But after it grew to ſuch a height that they were ſetled into factions of ſeparations, as the Eccleſiaſtiques and Imperialiſts, eſpecially in *Italy*; which the *Italians* quickly perceiving, becauſe earneſtly deſiring the Emperours power over them to be looſer, began to make uſe of the Papall preſent oppoſition to procure their full liberty: and therefore theſe factions were moſt ſtrong there. Yet that grand faction diſtinguiſhed

Auguſtinus de Ancona de poteſt. Papæ: quæſt. 37. Art. 5.

Segebertus chron. paſſim.

Nubrigenſis hiſt. Anglicana lib. 4. cap. 13.

Abbas Vnſpergenſis chron. paſſim.

diſtinguiſhed by many formalities, was principally maintained under the names of the *Guelfs* and *Gibellins*, which ſwallowed up all the private and pettie familie factions of *Italie*. As the *Vrſini* in *Rome* were *Guelfes*, the *Collonenſis Gibellins*, the *Vberti* in *Florence* were *Gibellins*, the *Bondelmonti Guelfes*, and ſo it was in *Naples*, *Venice*, *Millaine*: which ſtrife continued hot till *Boniface* the eight, who perceiving how much his predeceſſors had gained upon the Emperour, and ſaw but little more for him to get; began to practiſe the like domineering humour upon the other Potentates of Chriſtendome, ſending his letters of claime to the Kings of *France*, *England*, *Scotland*, *Denmarke*, *Poland*, *Hungarie*. But being oppoſed by *Philip le Beau* King of *France*, hee did flie backe to the Emperour for ſuccour, who then was *Albertus*, the firſt Emperour of the houſe of *Auſtria* (for though his father was Emperour, yet hee was not of the houſe of *Auſtria*, neither of the old Marqueſſes nor late Dukes, but Earle of *Hanshurg*, who had conquered the Dukedome of *Auſtria* for his ſonne.) This *Boniface* the *Spaniard* firſt began the faction betwixt the Kingdome of *France* and the houſe of *Auſtria*, by giving the Kingdome of *France* to *Albertus*. Theſe two better agreed then any, becauſe the Pope had taken off the Emperour from ſeeking his owne right in *Italie*, by imploying him as his champion to enlarge his dominion in other Kingdomes: and partly becauſe the Emperour had good hope to continue the Empire in his familie, as it hath neere foure hundred yeares. From which time the Emperours and Popes diſagreements were not ſo frequent, but onely when ſome *French* favourers were Popes, and they ſate at *Avinion*, as *Clement* the fifth with *Henry* the ſeaventh, and during the times of the Councels of *Conſtance* and *Baſill*. But by reaſon of the ſchiſmes in the Roman See, they did one another neither much good nor harme, vntill the time

Math: Pariſ. hiſt. Anglicana Anno 1215.

of *Alexander* the ſixth, a Spaniard, who was exactly ambitious, a great lover of his countrie, and one that did much for it. For hee joyned with *Ferdinand* the firſt Catholick King, helping him to ſubdue Spaine, and therefore firſt brought in the Inquiſition *Contra los Iudios y mores, que le aviantornado Chriſtianos*, which *Caranza* Arch-biſhop of *Toledo*, ſaith *Ferdinand*, conceived himſelfe bound in conſcience to vſe, by vertue of an oath taken with an imprecation by one of his predeceſſours in the fourth Councell of *Toledo*, which *Baronius* ſo much commends. This Pope alſo beſtowed vpon him the then diſcovered Indies, with many other favours, and for his ſake, and in oppoſition to the French, hee was as faſt a friend to the Houſe of *Auſtria*, as his deepe diſſimulation would ſuffer him; and the rather, becauſe they had lately matched with the Houſe of *Burgundie*, which much weakned the French force, and ſtrengthned their factions. But then moſt when *Philip*, the heire of the Houſe of *Auſtria* and *Burgundie*, incorporated himſelfe with Spaine. So that I will conclude theſe things conſidered, that this forme is onely ſafe and convenient for thoſe kingdomes that propoſe conqueſts, and can rule it as the protectors of it.

Anonymus Hiſp. in vita Alex.

Baronius Annal. An. 637.

Philip. Comineus, lib. 8.

Thuanus hiſt. lib. 4.

§. 5. So then ſeeing this Clergie is not for vs, I will conſider of the other, which for diſtinct proceeding, we may call *Democraticall*. When the three Prime Potentates of Chriſtendome, were *Charles* the fifth, *Henry* the eighth, *Francis* the firſt, ſuch as deſerved and deſired to haue all the ſoveraigne power that could of right belong vnto them, and yet were contrariwiſe vſurped vpon, and deprived of all their eminent ſupremacie, in thoſe things that moſt concerned them; & perceiving (ſome beginning to queſtion the Pope) a courſe of relieving themſelues, they began to vrge a Councell for reformation, not onely in doctrine and manners, but alſo in point of Eccleſiaſticall

ſticall government. But it was ſo long vrged by them, to no purpoſe, that *Henry* the eigth adviſedly wrote to the other; That ſeeing the Pope had ſo long put it off, and now intended to hold it within his owne territories, it were the beſt courſe for every one, to reforme his owne Kingdome, and he did ſo with the adviſe, conſent, and deſire of the Church and State repreſentatiue. No ſooner was a reformation in any degree ſetled, but preſently it was excepted againſt by ſome that favoured the Church of *Geneva*, as not fully reformed, becauſe not agreeing with their new neat platforme; & that was vrged vpõ vs, as the only Apoſtolical government of the Church. But I marvell how ſuch an exact government ſhould be ſo ſuddenly framed, or elſe which is more ſtrange, that they could ſo conceale their happy invention; as that *Francis* the firſt, a King of France, that ſearched into his government as much as any, ſhould not know of it. For I am very much deceived, if hee had not beene much miſtaken, knowing of this project, to deſire the Councell might be held at *Geneva*, being it was Diametrically oppoſite to the Romane. But our State had no reaſon to receiue it. For though it was neceſſary, not onely in reaſon of State, but alſo out of conſcience, that (after we perceived the indiſpoſition of the Romane Clergie to reforme themſelues, (which they ſeem to hold impoſſible.) For though every Cardinall takes an oath in the vacancie, yet it cannot binde him when he is Pope; wee ſhould then performe our duty, eſpecially ſeeing it ſtood with the publick good.) Yet neither of theſe conſiderations did engage vs to accept of ſuch a forme of Clergie, as ſeemed to runne a cleane contrary courſe, ſeeing we propounded not an innovation, but a reformatioa; that being as dangerous, as this was neceſſary, it could not here be entertained without an vniverſall innovation. Now all ſtirring changes are dangerous, eſpecially when the body of the

Hiſtor. Concil. Trid. l. 2.

Hiſtor. Concil. Trid. l 2.

common-wealth is full of diſeaſed, diſcontented humours. Becauſe all alteration ſets the humours a working, and one humour being a-foote, ſtirs vp all the reſt, either alluring by ſympathie, or provoking by antipathy; and when they are once a-foote, it is to be feared, that they will not onely disburthen the body of malignant oppreſſing cruelties, but weaken it in the moſt principall parts, cauſing it to receiue a diſpoſition to the like diſtemper, vpon every ſmall diſtaſte. But it is moſt dangerous to innovate in that part of a common-wealth, that is moſt eſſentially actiue, and hath beene lately recovered, eſpecially if the matter propoſed doe miniſter any cauſe of relapſe. Both which ſeem too true in this new diſcipline, which gaue an occaſion to the Clergie to revolt in the denying the ſupremacie, which they lately acknowledged. And being a forraine French deviſe, might ſeeme to come within the compaſſe of a *præmunire* for intruſion. as well as that of the Church of Rome for vſurpation. But this was only propounded, not brought in, and that by men who were by ſome beleeved to be faithfull to our State. And it may be, they had no dangerous aime in it, yet it would haue beene very dangerous for our kingdome, ſince it did neceſſarily induce an alteration in the profeſſion and practiſe of the lawes, which by reaſon of their long vſe, are as it were naturalized, into the manners and diſpoſition of our nation. Τὸ ἀρχαῖον ἐγγὺς τῇ φαίνεται τῇ φύσει. It muſt neceſſarily haue conferred ruines vpon our ſchooles of learning and hoſpitals of charity, razed the foundations of our Churches, confounded diviſions of pariſhes, changed the right and cuſtome of paying tythes, with many ſuch miſerable inconveniences, which were ſo in the Apoſtles times of miſeries, in perſecution. So that the State then would not venture to trie concluſions vpon it ſelfe, by this new receipt, *but chooſe rather to feele the ſuppoſed paine, than to take*

Ariſt. Rhetor. l. 2. cap. 11.

take the pill: and yet it hath ſubſiſted, though not in that heigth of health, which that forme of government promiſed; yet in ſuch a good competent continuance of reaſonable well, that the preſent ſtate alſo had rather indure the worſt of the diſeaſe, than make the beſt vſe of the remedie. And if it muſt haue made ſuch a change in the entrance, what would it haue done in the continuance? how would it haue agreed with this Monarchie, that muſt haue entred with ſuch oppoſitions? ſo that I neede not to ſay much to diſcard it, for it hath enough in it at the firſt ſight to keepe it out. And I confeſſe, that if I would, I cannot ſay much of it with any confident certainty, becauſe indeed I doe not know, neither doe I thinke that any of them doe, or at leaſt ever haue ſet downe, in poſitiue and plaine termes, the whole frame and face of this platforme, as they would haue it received in this Kingdome. But as much as I conceiue of it, and at the beſt and pureſt, it is a mixt Democraticall diſcipline, and it is not likely, that a diſſolute Democracie ſhould long agree with this Monarchie. It is not my intent here to diſcourſe of the nature of a Democracie, that I ſhould ſhew the manifold conſequent, coincident inconveniences, that doe naturally flow in with it, and follow it (notwithſtanding that *Machivell* in many of his diſcourſes vpon *Livie*, doth preferre a Democracie before any other forme, but rather wittily, out of a Paradoxicall contradicting humour, than wiſely, out of the weight and worth of ſincere, ſage, and ſerious arguments. And *Plato* ſaith thus much for it, in his *Idea* of a Common-wealth, *ἀδικιῶν inter iniquas formas optima, inter legitimas deterrima.* For if it begin to degenerate into an Ochlocratie, (as I cannot conceiue it poſſible, but it muſt, conſidering that liberty is the end and excellencie of it) then it turnes to a moſt head-ſtrong, intollerable tyrannie. For I am not of their opinion, that hold it a contradiction, that where a Democracy

Clayman. de A. c. resp. l 5.

Plato de repub. lib. 5.

mocracy prevayles, there can be a tyranny. For the *Ephori* of Sparta, were as the Tribunes of the people of Rome, choſen by the people, and out of the common people, and the conſervators of their liberty. Yet I thinke there are but few that diſcourſe of theſe *Ephori*, but they conclude, and condemne their government of tyranny. They caſt *Pauſanias* into priſon, and *Thucidides* ſaith, that they vſurped that power over, and againſt their Kings, for they put *Agis* junior to death, as *Plato*, Κατὰ Ἔφορος τυραννὶς ἔστιν Λακεδαιμονίων πολιτεία, and they were ſet vp to reſtraine their Kings. It is a hard matter to keepe that liberty within its limits, in any common-wealth, where it hath the ſupreme government, and therefore with much difficulty will it ſubmit to be governed by a free Monarchy, eſpecially a Democracie of that new nature, which makes the ſame perſons civill ſubjects, and eccleſiaſticall ſuperious, thoſe lay Elders that are neither Miniſters nor Magiſtrates, and yet muſt be governours in the Church, whoſe juriſdiction doth deſtroy the nature of a Monarchie. For all publick government in the Church, derived from Chriſt, the fulneſſe of it, is either Propheticall, Sacerdotall, or Regall; and they aſſume not any of theſe, but the Regall, which is given in charge to ſupreme Chriſtian Magiſtrates in a Monarchie; and therefore, if they deriue not this power from him, they eſtabliſh a regiment againſt him. So that if his power, doth not include theirs, they exclude his; and he having no ſupereminent power over them, as they impeach his right, ſo they will enlarge their owne liberty, till it be diſſolved into a looſe licentious libertiniſme: ἡ ὑπερώδης χειραγωγία, (as *Polibius* well expreſſes it.) And if they did not thus, it were the greater vertue, ſeeing they muſt haue ſuch power limited by lawes left to diſcretion. And they would finde it a hard peeece of patience, to abſtaine and containe themſelues within ſuch bounds of obedience, as this State neceſ-

Plato de leg. lib. 4.

Polybius hiſt. lib. 6.

neceſſarily requires. Can men that profeſſe themſelues popular paſſe plauſiblie and pleaſe the vulgar if they doe not to their vtmoſt vphold them in their higheſt inſolencies? *Tullie* found this impoſſible when as hee withſtood the people in *Lege Agraria*, for they caſt him off, and clave to *Rullus*, who would be *popularis* though it were but in *populatione*: and as it cannot ſtand with the power of our government, ſo it withſtands the honour of our governour, debaſing the majeſtie of a Monarchie into a popular paritie, without reſpect of His moſt ſacred perſon. In this it is truly Democritall; for as it was received for libertie, ſo it muſt bee vpheld by equality: παῤῥησία cannot be fully free without ἰσηγορία, and I cannot then conceiue how any could apprehend it as a forme likely to agree with ſtate; ſo that this government at the beſt would bee like the ſpleene in the body, which is the ſubject of the dregs and ſettlings of the humours, as a Democracie is *la feccia della plebe*, and as the ſpleene being not able to mooue it ſelfe is not troubleſome, ſo long as it is not preſſed vpon by the heart, but permitted full and equall liberty, nor diſturbed by a *Flatus hypocondriacus* ὑποχονδριον δὲ χρὴ ἄπονον καὶ ὁμαλές, but once mooved ὀλεγμαίνον ὃ ἢ ἀνωμαλοῦ, μὴ θορύβῃ ξυγχυσικὸν affectes the head and heart with turbulent diſtempers; ſo in a Democracie as long as they haue all at their looſe liſt, and are not compelled to keepe within compaſſe, but apprehend themſelves equall to the higheſt in all reſpects, and are not mooved by ſome ſedicious ſpirit, they are quiet enough; *Nam multitudo, ſicut mare, per ſe immobilis eſt*, but if once they perceive that any goe about to oppreſſe or croſſe them in their falſe and fugitive liberty (as they are very ſuſpicious vpon the leaſt cauſe) they preſently are ready, but *tentare magis quàm tueri libertatem:* and if any one dare but begin to blow a Trumpet of ſedition, (as they doe not eaſily) *ſtatim ferox erit ſi non ad bellandum, ſaltem*

Tullius in Orat. 2. cont. Leges Agrarias.

Polybius Hiſt. lib. 6.

Guiccardine, Hiſt. lib. 2.

Hippocrates prænotion: cap. 11.

Livius hiſt. l. 5.

Pſalme 65. He ſtilleth the noyſe of the waues, and the tumult of his people.

Idem ibidem.

saltem ad rebellandum. I doe confesse that this forme of government may bee of good use in some states at some times, as in a popular state where these Lay Elders may be both Church and Citie Burgesses; as the Democraticall *Helvetians* approved it: so also as for the enlarging of a Monarchie, the Monarchicall is best; so for the settling of a Monarchie, that Democreticall may be safest, and so may bee the best government when a state is not settled but newly erected: for then it is not safe to use severitie as when our state was not fully settled. *Martin Mar-Prelate* dared to vent his discontented humours in salt rumours, as men in rheumes: *In novo & precario imperio non statim jugum rigidum cervici imponendum*, but it is good taming them by degrees, for then a Magistrate hath little power to command, much lesse to restraine; & therefore it hath bin found the best course to let thē take their course: for *Mos est vulgo, mutabili subitò, & tam prono in misericordiam, quàm immodicum sævitiâ fuerat*, and so by indulgence finde *lascivire magis plebem quàm sævire.* And *I am perswaded that this discipline was onely chosen for that time when the Apostles were under persecution*, and there were no Christian Magistrates to repaire to for justice: then they appointed some to judge betwixt brother and brother. But it doth not appeare that they were Ecclesiasticall Iudges, certainly no such lay Elders in the Apostles times as the Separatists now plead for, but rather civill arbiters to make agreement betwixt them in civill controversies, (as may appeare out of the place) though the author of the History *Concil. Tridentini* make that a ground for Episcopall jurisdiction. For the Apostles had no reason to delegate the cognizance of spirituall causes, because in those dayes they were so few, and needed no proofe to them; because they had the gift of discerning of spirits, and of knowing of secrets, hauing the gift of prophecying. And I doe not beleeue that it can bee proved that they

Machivellus, l. 1. cap. 5.

Curtius Histor. lib. 5.

Tacitus Histor. lib. 1.

Livius lib. 11. Histor.

1 Cor. 6. 4. 5.

Histor. Con. Tnd. lib. 3.

they gaue commiſſion to any to receiue accuſations, (which is much leſſe then to giue judiciall cenſures and decisions) to any but to the Biſhop of *Epheſus*: but I intend not to enter into controverſies, neither need I, ſeeing ſo much hath beene already written in that point to good purpoſe by many moſt reverend Fathers of our Church. But to returne to my intended diſcourſe; this ſtate of the ſoveraigntie of theſe ſeniors I grant to be of ſome uſe in free Cities in time of tumult; and ſo I doe beleeue M^r *Calvin* intended it, yeelding to a popular partie, and not as an vniuerſall perpetuall government for all truely reformed Churches. For though ſuch a wiſe reſpected man as hee was, might during his time preſerue it in the ſame correſpondent conformitie to his propoſed patterne, (as *Polybius* ſaith) the *Thebane* Democracie οὐκ ἦ τῆς πολιτείας σύστασις, ἀλλὰ ἡ τῶν προεστώτων ἀρετή; it ſtood not by the good temper of their pollicie, but by the vertue of their governours Ἐπαμινονδᾶς, καὶ πελοπίδας: ſo might it bee ſaid of the *Geneva* Church government, that though for the tranſgreſſion of it many were the rulers of it, being a Democracie: yet by a man of underſtanding and knowledge, the ſtate thereof was prolonged; for hee could doe much to appeaſe ſeditions, as *Franciſcus* Biſhop of *Volterra* ſooner ſettled a tumult in *Florence* by his graue preſence, then the Magiſtrates could by the weight of their authoritie. It is plaine then out of this that hath beene ſpoken, that this government by popular Presbyterie is not for this ſtate.

1 Tim. 5.

polyb. lib. 2.

pro. 28. Nil magis aquis prodeſt quam curari aquo volunt.

Seneca Cont. 5. Machiavellus, lib. 1. cap. 514.

§ 6 Neither of theſe being convenient, and there is but another, and it hath alwayes beene the government in this ſtate; it muſt neceſſarily follow without any more proofe, that this is moſt agreeable with the Civill. Thoſe that are no well willers to our ſtate haue ſtrucke at our Church gouernment, with which there is ſuch a happie hartie vnitie, as dare bid the world doe as ſhee would bee

done to (as that abſolute Statſe-man the Earle of *Salisburie* replyed.) And it is no marvell, ſince it is not onely the primitiue ancient government of the Church in generall; but the onely forme alſo that euer was received in this ſtate, according to the ancient lawes of this Iland, though it ſeeme to be brought in under *Henrie* the eight, when it was onely reformed from the euils, and reſtored to the former ſtate: for our Clergie was never of right ſubject to the Pope, neither as he was Patriarch to the Weſt, nor in his province. And this Ariſtocraticall forme hath moſt happy qualifications that diſpoſe it to the peace, profit, honour, & ſafety of this ſtate: I could now wiſh with *Tully* when hee was to write againſt *Democraticall Agrarian* lawes, *Vtinam Theophraſtum περὶ φιλοπολίας, &c. Vbi multa ſcribuntur* Ἀειστοκρατικῶς. After this Kingdome with many others had long laboured under a lingring conſumption, being continually ſucked, and in a manner exhauſted by the continuall ſupplying of the Popes Exchequer, which drew away the vitall ſpirits, weakned the ſinewes of warre; cauſing extenſions and convulſions: and farther alſo in reſpect of domeſtique peace, it had not a juſt proportion of power to exerciſe its onely civill and lawfull authority: inſomuch that many who ſhould have knowne what in poſſibilitie of ſtate might bee done for a recovery of a temporalitie, diſtempered and diſtreſſed by the malignant humerous power of an uſurped ſpiritualitie, like a feaver in the ſpirits cauſed by obſtruction; All thoſe men gaue it over for deſperate, ſome conceiving the diſeaſe incurable in its owne nature, becauſe, that *non obſtante* the helpe of ſo many ſtrong ſtatutes and purging proviſoes, the diſtemper was as violent, and more virulent then before; & they ſaw no ſafe and certaine courſe of preventing phyſick, for it was ſo far ſpent, as that it ſeemed to haue paſſed the period of curing: but as when men are brought to a deſperate point they will trie concluſions, and they that

Ad Atticum, l. 2. epiſt. 3.

πνευματώδης. *Hippocrat: lap. 5. prog.*

that drive them to it doe often repent it; ſo the Pope putting and paſſing our ſtate upon deſperate hazards, forced it to trie its ſtrength, which is ſoone found; neceſſitie driving, and opportunitie drawing: *Acerrima virtus eſt, quam ultima neceſſitas extundit*: and ſo it caſt ſuch an vnreaſonable vnruly rider, who thought, and ſo did all chriſtendome, that hee had ſitten cloſer and faſter upon our skirts, and would not beleeue that it was poſſible for a Parliamentary power repreſenting the ſtate, euer to haue beene able to diſſolue the great Abbies, though they durſt fully reſolue it; untill they ſaw them begin with the little ones; then they had reaſon to grant it poſſible: ἐδὲν γὰρ ἄρχεται γίνεσθαι τῶν ἀδυνάτων. Yea they found it fully finiſhed, and that on ſuch a ſudden, that as it wrought admiration in the beholders, ſo it procured ſafety to the actors. For in actions of that nature, haſte onely makes good ſpeed. That the event of this action was good, is proved by the deliverance of the ſtate. But for the action in it ſelfe conſidered, as I doe not commend it, ſo I will not condemne it, becauſe I am not able to ſift and ſearch into the circumſtances of it; but I will onely ſay thus much of it, That actions that ayme at, and make great alteration, though to the beſt, doe ſeldome keepe a juſt mediocrity, eſpecially in reſpect of that part of the common-wealth, which is the ſubject of the alterations: as a ſtrong, ſtirring *Chymicall* ſpirit-purge doth in a naturall body, that ſtirres vp more than ſhould be moved, and purges out good, as well as ill humours. But no ſooner was our State thus delivered from vnder the tyrannie of the Eccleſiaſticall Monarchy, but it as ſoone pitched vpon the Ariſtocraticall government, as ſuitable and fitting beſt with the weale-publick. And as all the Chriſtian world did then in ſincere judgement of State *rebus ſic ſtantibus* approue their choyce, ſo we haue ever ſince found the happy effects of it, in the ſafety, honour, and treaſure of the

Senec. de Clemen. l. 1.

Ariſt. Rhetor. lib. 2. c. 20.

State. Conſider it firſt, how it wrought little or no alteration in the receiving, being according to the lawes, taken by their owne choyce, reſtrayned with the limitations of the Civill State. For all the turmoyle and toſſing tumult, was onely in caſting out the other forme, as a privation, before the induction of a new forme in naturall bodies. It was received without force, as moſt naturall to the Civill State, and no other could haue beene brought in with ſuch certaine good ſecurity of the ſtate: for the Monarchicall that time could not be received, but either vpon their repentance of what they had done, and by procuring of a pardon from the Pope, (as it was in Queene Maries dayes: and doe but conſider, how evill that was for the State) or elſe by helpe of forraine force joyning with domeſtick rebellion, as was often attempted. But this was not any thing ſafe for the kingdome, as is already proved. And for the Democraticall diſcipline, there was great and certaine danger in receiving of that, for it could not poſſibly be conceived to be received, but with a ſchiſmaticall ſedition, ſince it was approved but by a faction. Now doe but conſider, how dangerous ſeditions are in an ancient kingdome; if it were now a ſettling, happily the vigour of youth would beare it out, as one maine reaſon (as I conceiue) why the Roman Monarchy was not ruined by thoſe foure firſt grand ſeditions, was becauſe it was but *ſecunda ætas*, *& quaſi adoleſcentia:* But when a State is growing old, ſeditions are deſperate courſes to procure changes, though it be for the beſt. For though the events of them be but doubtfull, yet the deciding-place is certaine of loſſe. But for this preſent forme, as it re-entred without a State-earthquake, without any ſhaking of the ground of the Civill government, ſo it hath ever continued peaceable, and a pacifier of growing differences, being the middle State of three, carrying it ſelfe as a moderating mediator betwixt

Hiſtor. Concil. Trid. lib. 2.

Lucius Florus lib. 1. cap. 22.

twixt the King and the Subjects. And all this good, and much more proceeds from the temper of the forme of government. For it is the onely forme fit to be vnder this Monarchy, becauſe it will onely be eaſily ruled and ordered by the State, when as both the other will rule wher they are entertained, although after a divers manner; one having dominion over the Civill, the other without it. But this is vnder the Civill, in relation to the head; and in it, in relation to the body. And as it is eaſily ruled, ſo it will not eaſily be diſordered, as the other will, though they ſhould ſubmit to be ruled for a time, till they be able to reſiſt. For ambition is ſo perniciouſly provident, that it will be ſomething able to reſiſt the power of its oppoſite, to get from vnder it, before it trie to goe about it. Firſt, taking care not to be oppreſſed, before it endeavour to oppreſſe; for all the branches of rebellion, are rooted and hid in the depths of diſſembled diſobedience. But this is not ſo inclined; for if any forme of policie degenerate, it muſt be either into a Tyranny, an Oligarchy, or a diſſolute Ochlocraty. Now an Ariſtocracie cannot be immediately diſſolved, either into a tyranny, or a tumultuous popularity. And it is not eaſie to conceiue, how it ſhould by any meanes, by the courſe of State corruption, ever degenerate into a head-ſtrong popularity of it owne accord, without externall force. And as little reaſon there is, why this ſhould advance it ſelfe to a tyranny, by turning the Church into a court, and religion into a vaſſall to ambition; for it muſt be reduced and reſtrained into an Oligarchie: and there is no great reaſon in this point, to feare the Clergie in this kingdome, all things conſidered. It is true (as all Hiſtorians and Politicks obſerue) that an Ariſtocracie is ſubject and prone to be corrupted into an Oligarchie: But doe but obſerue the end of an Oligarchie, and you will finde, that an Ariſtocracie can haue no ſuch ayme; for their end is, to grow rich,

Earle of Saliſbury his anſwer to ſcandalous papers.

rich, as the States of Venice and the Belgick provinces, and their counsels driue at that end, ἐν ὀλιγαρχίᾳ βυλόμενοι πλυτεῖν; and according to this end, and this counsell to it, he that will prevaile in perswading with them, must deliberate, *in libera ciuitate, non vt apud reges, quæ delectant, sed quæ prosunt suadenda sunt.* But our Ecclesiasticall Aristocracie is not to be so perswaded, having no such counsels, because not the same end; only they may be rich, if they did desire it, because being poore, they are a fit subject of wealth. The poverty of this Clergie hath charmed it against actiue ambition, so that one of the *Optimates* doe not looke higher than his peeres, set with him in equall power and honour, in relation to their severall Dioceſſes, though the power of jurisdiction be in some cases larger, in the provinciall Prelate, *Nemo nostrum Episcopum se Episcoporum esse dicit, neque tyrannico terrore ad obsequendi necessitatem, collegas suas adigit:* so that *per accidens*, the impoverishing of the Clergie in *Henry* the eight, when it seemed in the eye of some too rich for the Civill State, did this good, to preserue them from an Oligarchie; even as to take so much bloud away in a plurisie, as to bring a man to a deepe consumption, is a probable preservatiue against dying of a burning feaver. So that alteration of this State is not much to be feared, in respect they haue no reason to alter it; and withall it is not easily altered, if they had this or any other ground to doe it. For an Aristocracie in it selfe considered, is a government of a most constant, continuing constitution, especially, when it is mixed and tempered with a Monarchy. For the reason of its constancie is not onely the slowneſſe of the motion, either to augmentation or diminution, like a great engine moving with many joynts, in which poynt a Monarch will much advantage in advancing & setting faster forward, if not their deliberations, yet their determinations; and with ease and speed

Arist. Rhet. lib. 1. c. 8.

Sen. Suasor. 1.

Augustinus contra Donat. lib. 4 cap. 1.

ſpeed ſtay all their errors and declinings, while they are but in the breedings, beginnings, and begettings; but then alſo the force of their factions (which breaking out, are the common ruine of Ariſtocracies) will be abated, as it may be ſeene in the Spartane and Venetian States, oppoſed to the Athenian and Florentine. For theſe had an Ariſtocracie without a Monarchie, and were continually toſſed with ſeditions and factions. As that long laſting faction of the *Guelfes* and *Gibilines*, which could never be fully taken away, but by the ruine of one partie, when as the Venetians their neighbours (whoſe Duke was then not a *Simulachrum imperij*) kept the faction out of their common-wealth, though they did declare themſelues ſometimes on one ſide, and ſometimes on another, leſt they ſhould haue beene hated of all, as negligent neutrals; but they did not nouriſh the faction amongſt themſelues, but maintained it in other Countries, as they would doe warres. But the State of *Millaine* could never be free from it, vntill it was extinguiſhed by *Franciſco Sforza*, (who was a free Prince, though an vſurper) ſo that the mixture of a Monarchy, and the predominancie in an Ariſtocraticall State, doth not onely make it actiuely more able to offence, but more paſſiuely powerfully defenſiue, not onely by preventing preſervations from domeſtick dangers, but alſo by recouering it out of them. *And our preſent State Eccleſiaſticall is thus mixed.* (for I doe not vrge a ſtrict Ariſtocracie; Αειςὸν ὃ πάντα Αειςοκρατικῶς ποιεῖν (as Ariſtotle) and therefore hath the beſt meanes of conſervation in reſpect of the former. And it hath one more prevalent preſervatiue in the Optimates themſelues, which is, that they are ſtrongly diſpoſed to this kinde of government, not onely by being of quiet contemplatiue natures, but alſo Academicall Colledge government, which doth firſt poſſeſſe them and fully pleaſe them, is Ariſtocraticall, having the proper ayme of that

Paulus Iouius hiſt. lib. 6.

Bellar. lib. de ſummo Pont. cap. 3.

forme of government; *τὸ τέλος τῆς αἱρετικῆς πρὸς παιδείαν*, discipline according to law, is the end of that forme of government. And they then that ayme at that, are moſt likely to preſerue it, by perſevering in their intentions; when as others that will deviſe new platformes, and platforme diſcipline, and will ſeeme wiſer than the lawes, doe ſuddenly ſubvert or diſturbe this moſt ſafe and ſetled forme of government. Witneſſe the Athenians and the Florentines, who being of a ſtirring over-actiue temper, and alwayes doing, though it were to the vndoing of things well done, changed this forme of State ſeven times, which corrupting tranſmutations, I hope *Machivell* their Countryman doth not call and commend vnder the termes of reformation, and reduction to their primatiue principles, without he will grant their prime originall order, to be rayſed out of confounded confuſions. When as the Venetians, who haue beene calme and cold, and conſtant in provident proceedings, haue kept to the ſame forme without any fundamentall alterations, and that becauſe they will be ruled by lawes; whereas the Florentine is ſo overweeningly wiſe, that he thinkes he ſhould Emperour-like rule and make lawes *ἀρχικὸν τὸ φερειν*. So that *Bodinus* judgement of them, and the Neopolitans is true; and approues him to be a moſt rationall ſtatiſt; *Dignos ſe eſſe imperio ſinguli arbitrentur ad populare imperium, magis quàm Optimatum inclinati.* But ſuppoſe this government ſhould be diſordered, it is eaſilieſt reformed againe, which is a point of very great ſafety, it may be done without any ſtirrs of tumults, and ſpeedily, for it hath not that power to reſiſt authority, which the other two formes haue; and that becauſe it vſeth not the meanes they doe to procure it. For the Monarchy of the Church of Rome, and the Democraticall diſcipline, ſtirre vp the vulgar, and rely and reſt vpon them for aſſiſtance, and defence, and therefore they endeavour to wooe and winne

Ariſt. Rhet. lib. 1. cap. 28.

Thucydides l. 3.

Machivellus lib 3. c. 10.

Ariſt. Rhet. lib. 1. cap. 11.

Bodinus de repub. l. 5. c. 1.

win their hearts, that they may vſe their hands and purſes: yet they doe it divers wayes. As the Romaniſts, amongſt many other wayes, they get into their hearts at their eares by auricular confeſſions, they hold them by their eares, and by their eyes; they faſcinate their fond phantaſies with ſuperſtitious ceremonies, exquiſitely intricate, full of myſticall and magicall mazes, broached by fancie, continued and countenanced by fables, conſiſting in the maſſie materiality of bodily exerciſe, as may be ſeene in the auſterity and State of an Auſtrian penance, or in a Pontificall proceſſion, where all is done with ſuch concealed ſecrecie and ſilence, that nothing is proſtituted to be polluted by the vnſanctified view of the vulgar. Thus by feare mixed with delight in ſuperſtition, they can leade them as they liſt, and engage them in their quarrels, and bequeath to them their dangers they haue pulled vpon themſelues. The Diſciplinarians are not onely endeered to them, for the forme and frame of their government, and for their novelty, but they make vſe of ſuperſtition alſo to hold them, and to haue them at their beck; but in a courſe cleane contrary to the other, for they vndoe all the other haue done, in point of ceremony, without conſideration, whether it be good or bad. and that out of a ſuperſtitious rage, as the other did out of feare: (for ſuperſtition is grounded vpon either of thoſe paſſions.) And as their feare was mixed with pleaſure in the end, ſo theirs is mixed with profit, when in the deſtroying of ſuperſtition they enrich themſelues with the ſpoiles, and ſaue charges in ornaments. Which profaneſſe of theirs, is in ſome reſpects worſe than their ſuperſtition, and it many times ends in Atheiſme. For though they were conſecrated after a falſe manner, yet they were dedicated and devoted to the true God, and ſhould not be profaned to common vſes, but ſanctified by a new and true conſecration, as well as the Churches wherein they were. Thus

thoſe formes of Church-government haue power to withſtand the reforming rod of authority. But our preſent State vſeth no ſuch meanes to ſtand out a rebellion, becauſe if it offend, it rather proceeds out of weakneſſe than wickedneſſe, from ſcholaſticall indiſcretions, that deſerue rather pitty than puniſhment. For it is not likely, that they would diſturbe the State, who ſhall certainly loſe that little they haue by it, rather than get more. I find, that amongſt thoſe Prelates that haue troubled and turmoyled kingdomes, *Peters* pretended ſucceſſours haue only gained, by fiſhing in ſuch troubled waters. And as they can haue no end worth their ſtirring, ſo their naturall inclination is not ſo perniciouſly pragmaticall, they are farre from the tricks of tumbling projecters, and all actions proceed either from our generall end, or particular inclination; and this inclination is fortified and confirmed, if not formed and framed by their ſtudies, which haue a great influence into the diſpoſition. I haue not in this diſcourſe, entred much into the commendation of an Ariſtocracie in generall, preferring it before a Monarchie, partly becauſe I feare, leſt ſome ſhould ſerue me as *Caſtellanus*, a French Philoſophy reader (who, as I conceiue, was *Ramus* his Tutor) ſerved his antagoniſt *Bigotius*. For when *Francis* the firſt was deſired by ſome of his Nobles, to reade *Bigotius* his Diſputations, *Caſtellanus* told his Majeſtie, he was an *Ariſtotelian*, and *Ariſtotle* preferred an Ariſtocracie before a Monarchie, & ſo tooke off the Kings affection from him. But he might be ſo excuſed, becauſe I doe not beleeue it was *Ariſtotles* judgement, but his policie, to diſſwade all others from affecting it, that his Maſter *Alexander* might effect it. But I did purpoſely forbeare it, becauſe it was not my propoſition, that an Ariſtocracie is ſimply a more convenient forme of State than a Monarchie; but that this Ariſtocracie is more convenient for this State at this time, conſidering

Thuanus, hiſt. lib. 6.

dering that it was receiued with an vniuerſall conſent and deſire of all, and hath its right according to the lawes; is moſt eaſily ruled by them, not eaſily nor ſuddenly diſturbed or diſturbing; and moſt eaſily reformed if it bee diſordered: ſo that I may now vndeniably conclude, that the preſent ſtate Eccleſiaſticall is moſt convenient and beſt agreeing with the Civill.

A DIGRESSION DISCVSSING Some ordinary exceptions againſt Eccleſiaſticall Officers.

THough none bee more loath and fearefull to come within the liſts of controverſies; yet ſeeing all that I haue already poſitiuely diſcourſed, is not onely controverſed but alſo contradicted by theſe exceptions; I reſolved to diſſolue and diſpell them, leaſt they ſhould by a darke reflexion ~~cloud my cleare proceeding~~. ~~And I am~~ not a little confidenced in my purpoſe, when I conſider whoſe cauſe it is that I vndertake, even the moſt able advocates of the Church, ſuch powerfull pleaders as are infallibly ſufficient to defend both their cauſe and mee their poore defendant; for they are abſolutely able (if their conſcience would but diſpence with their vnderſtanding) to make a bad cauſe if not good, yet to put it in a good caſe by making it plauſible, ſo that I am encouraged to vndertake it with this conſideration; that where I am found weake and wanting, they are ſufficient and ready to ſuccour and ſupply; if they ſhall apprehend the exceptions peremptory and pertinent, and any impeachment to their practiſe and power. As they that haue made triall of their ſtrength haue found, though they were of the ſtrongeſt and moſt popular partie, which they the more wondered at, ſince they knew they had but few friends, and themſelues ſmall in number, eſpecially in the beginning of the reformation

D. Couzius his apology for proceeding in high Commiſſion.

tion when there was ſuch ſcarcitie of Civilians, that the Vniverſities tooke little notice of their degrees or profeſſion, or the Courts of their practiſe: but now wee haue a moſt happy and hopefull increaſe, and it were to be wiſhed that the land were more ſtored with able Civilians, though they bee not pragmatiques; I meane that the knowledge of the Civill law were more regarded, though the practiſe keepe but the ſame degree of reſpect; for then ſhould wee haue more able Common-wealthes men at home, and more abſolute Statſe-men abroad; for all the nations round about are ruled by the Civill law, as we are by the Common law: onely they haue ſome particular decrees, manifeſtations, and ſanctions, as wee haue ſtatutes and Acts of Parliament; and ſo by that law the treaties we make for matters in queſtion are to bee decided by that law; that which is determined by conſultation, and agreed upon, is to bee concluded: ſo that it muſt needs bee, that he that is well ſeene in the Civill law is beſt able to treat with them with more honour and leſſe danger to the ſtate, for in them there is onely the feare and danger of perfidiouſneſſe, whereas the other may want honeſty and ability both, though their inſtructions bee never ſo punctually accommodated. And this is one maine reaſon (as well as the Popes power) why many Deanes, Biſhops, and Lord Chancellours, who were Doctors of the Civill law were ſent Embaſſadours, when the Nobility had not ſo much law and learning as now they haue; ſo that for this laſt preſent age we haue not loſt ſo much in treating with *France* where the Civill law is moſt practiſed, as to confirme or continue the proverbe which I finde mentioned in *Phil. de Cominaus*; *Pactio nulla inter Gallos & Anglos*-- in which the *French* did not get the better, *adeoque proverbio dicitur apud Anglos, quoties cum Gallis prœlio certaverint, victores plerunque fuiſſe, quoties verò cum illis pacti ſint detrimentum ſemper aliquid accipiſſe*, which was moſt

Comment. Lud. 11. *lib.* 4.

moſt verified from the time of *Edward* the 3. to Queene *Elizabeth*, but it is probable their over-reaching was much helped forward by diſhoneſty, where they found any little want of ability: but grant it were the diſability of our agents, eſpecially in the ignorance of the proceedings and advantages of the Civill law in buſines of tranſ-action wherein the *French* were defendants and paſſiue; yet it was not any honourable advancement to them, though it were ſome ſmall diſadvantage to us: for it is a diſgrace for a Prince to ſtand ſtrictly vpon tearmes, trickes, and turnings of law in the interpretation of treaties; as *Maurice* Duke of *Saxony* told *Charles* the fift, when contrary to agreement, he detained *Philip Landgraue* of *Heſſen*; *at ego* (ſaith he) *te tanquam Imperatorem, non tanquam iuriſ-conſultum & legiſtam, volo pactiones & fœdera interpretari.* But ſince treaties are too often ſo interpreted, it is in all probability a great aſſurance of ſafety in treating to underſtand the Civill law, at leaſt in the proceedings; and hence it is as I conceiue that in *France* and *Italy* it is ſo much eſteemed; ſo that in *France* moſt of the ancient Nobility were ſtudents in it, and had amongſt other priviledges, that they may take the degree of Bachelour at law in three yeares, as it is plaine in the pragmaticall ſanction; which particular is alſo confirmed by the *Concordata Galliæ*, by *Leo* the tenth; *Bacchalaureo iuris Civilis ſi ex utroque nobilis, triennium ſatis erit.* In *Italy* alſo it hath beene highly eſteemed, eſpecially in the firſt receiving of it under *Lotharius ſecundus*, in the yeare 1125: for he found a coppy of the Digeſt and gaue it to the *Piſans*, which was then called *litera Piſana*; but when the *Florentines* tooke *Piſa* (as *Laurence de medicis* told *Politian*) it was tranſlated to *Florence* and made *Pandectæ Florentinæ*; *ibi verò in curia loco celeberrimo ſummâ religione ſervatur*: and they did not uſe in thoſe dayes in the firſt erecting of their Dukedome, to eſteeme any thing which they found not beneficiall

Carolus Molinæus conſcilio ſecundo in cauſa Philip. Londgraue: Haſſiæ.

Prag. ſanctio tit. de collationibus. Concordat Galliæ tit. idem.

Angelus Polit. epiſt. lib. 1. epiſt. 4.

beneficiall for the ſtate. But I leaue the commendation of the knowledge of the Civill law to thoſe that know it better, and haue found the helpe of it in long publique practiſing; and betake my ſelfe to my vndertakings, to diſcard ſome exceptions againſt the profeſſours of it, who are Officers practiſing in Eccleſiaſticall affaires.

They are excepted againſt by ſome that are of the faction of irregular Proteſtants; that though the Church of *England* approoue not the *Geneva* diſcipline, yet the principall point is practiſed in it; in theſe our Lay Elders: thus they ſeeke to defame our government by reporting it to bee confuſed and wanting vniformity. But to diſcuſſe and diſcover this groundleſſe exception, the very ſuppoſition whereon it is grounded is abſolutely falſe; for though we will not deny that our Eccleſiaſticall Officers be Lay men, yet wee will not grant them to be Elders of the Church: we haue no ſuch Church Burgeſſes, neither doe they take any ſuch Elderſhip vpon them, ſince they know full well that it belongeth only to ſpirituall perſons; which they confeſſe and profeſſe they are not: as that profound Civilian Dr *Couzins*, wee are no ſpirituall perſons as ſome tearme vs, but Eccleſiaſticall: now in my vnderſtanding there is as much difference betwixt a Spirituall perſon and Eccleſiaſticall, as betwixt *Eccleſiaſtes* and *Eccleſiaſticus*; the one of which is Canonicall, the other Apocryphall; though he be a Canoniſt, I dare without any ſcruple grant them to bee Lay men, not onely becauſe it takes away the ground of the exception, but alſo becauſe it is not any hinderance to their being Eccleſiaſticall Officers; for the Cannon law which is very ſtrict in this point admits a threefold diviſion of Eccleſiaſticall perſons; as *primò, in ſacris; ſecundò, in ſacris & ſacerdotio; tertiò, nec in ſacris, nec ſacerdotio, vt monachi & legiſtæ eccleſiaſtici*: and ſuch doe the chiefeſt among them account themſelues, for they are well contented to goe for Com-

Exception 1.

D. Couzins his apology for proceeding in high Commiſſion. 3. *part. cap.* 22.

mons in the high court of Parliament. Yea a moſt eminent Chauncellour of late refuſed when his Biſhop would haue choſen him a member of the Convocation houſe, and that becauſe hee held himſelfe a Lay man; and ſo they liue in our particular Pariſhes as other Lay Pariſhioners, paying Church dues, and are alike ſubject to the *juriſdiction* of their appointed Paſtours in *foro conſcientiæ*; and in thus doing they doe declare their exact knowledge in the Cannon law, and pure practiſe of the Civill: for by the Common law where *Doctores divini & humani* are oppoſed, Doctors of the Civill law, yea & Cannon alſo are counted *humane*, and Lay Doctors: for the Clergy (as *Briſſonius* defines it out of *Suidas*) is Σύστημα τῶν διακονῶν καὶ πρεσβυτέρων. But fully to caſt of this exception, I deny them to bee Elders of our Church; for Elders here I vnderſtand in relation to Church government, and in that ſence there are no Elders with vs in our Church but Ordinaries; and our Eccleſiaſticall Officers are not Ordinaries, neither doe they vſurpe any ſuch power; but their modeſties are many times forced to take the title and tune of the title from ſome obnoxious fawning Clergy men, who are more ſordidly ſlaviſh then they would haue them: ſo that though of diſcretion they will not ſay to them as *Tyberius* did to the ſervile ſenate, *O homines ad ſervitutem paratos*, yet they cannot chuſe but thinke ſo, for they know that by the Cannon law there is no Ordinary *Iure* but a Biſhop, *per Ordinarios jure intelligimus Epiſcopos*, neither any by priviledge and cuſtome but a Deane, or an Archdeacon. And they doe as fully underſtand that in this Church there are none but what the Cannon law allowes: as S^r *Thomas Smith* in his diſcourſe of the Common-wealth of *England*, ſaith, by an Ordinary we underſtand a Biſhop, or ſometimes an Archdeacon or a Deane, who are ſo by priviledge; or a long preſcribed cuſtome. Now they are not Archdeacons nor Deanes as I would they were, and many

Guymer Comment: in prag: ſanction: proæmio.

Briſſonij Lexicon. 11.

Tacitus Annal. lib. 3.

Extrav. fol. 22. *tit. execrabilis, §. caterum.*

Linwood lib. 1. *de ſequeſtrationibus.*

S. Thom. Smith de repub. Ang. lib. 3. *cap.* 8.

of

of them haue beene heretofore, as *Petrus Bleſenſis* Archdeacon of *Bath*, who was Chauncellour of *Canterbury*, and Chaplaine to *Henry* the ſecond: for then this exception and all others would bee of no force. But they are now no ſuch Ordinaries as are Church Elders with us, I will grant them in a large ſence to be Ordinaries, (as *Guymerus* the pragmatique) *Ordinarios latè volo collatores beneficiorum, & patronos Eccleſiaſticos*, (as *Glanvill* calls Patrons) *advocatos Eccleſiæ*, in ſuch a large ſence it is properly extended to theſe Eccleſiaſticall Officers; but Ordinaries properly they are not, and that appeares out of the offices they execute in relation to theſe Ordinaries, for they are their Deputies, Deligates, Vicars, Officialls, or Commiſſaries, which are officers diſtinct and derived from their Ordinaries: of all theſe the Biſhops Vicar hath moſt reaſon to be tearmed an Ordinary, & yet he is none; not onely by the Civill law which makes him a miniſter of his Ordinary, *Vicarius eſt qui ſuo Ordinar ſubminiſtrat*, but alſo by the Cannon law, (as *Prateus*) *Vicarius & Ordinarius diſtinguuntur, nam vicarius eſt quaſi ſervus in peculio*: (or as *Suidas* calls him) *ὑπὸ ὑποστιτυτε*, Βικάριος παρὰ ῥωμαίοις διάδοχος; and *Panormitanus*, *jurisdictio Ordinaria non extinguitur per mortem illius qui dat, jurisdictio vicarii eſt ſuſpenſa ſuſpenſo Epiſcopo*, and *Durantus* affirmes as much; *Vicarii nequeunt officia ſua exercere Epiſcopis eorum excommunicatis*, and therefore they doe well in clayming no ſuch power; as S^r *Thomas Ridly* learnedly diſcovering the originall and reaſon of their practiſe in the Church, concludes, that Civilians or rather Legiſts who were ancientlly called Church Lawyers, or *Eccleſiecdici*, were brought into the Church to direct Biſhops; and the Chauncellours at this day are the very ſame in office with them, being aſſiſtants of the Biſhops in their juriſdiction. And S^r *Francis Bacon* in his cautious conſideration of Chnrch government, agrees with him in the approbation of a Biſhops

Comment. in prag. ſanction. tit. de collat. §. Ordinarios. Glanvill. 4. c. 1.

Briſſonius Lex. verbo vicarius. Prateus Lexicon iuris Canon. verbo vicarius. Panor. in decretaliſta de iurisdict. Durantus in ſpecu lib. 1. par. 1. tit. de iudice delegato.

Sir Thomas Ridleyes vew of Eccleſiaſtical and Civill law.

Sir Francis Bacons conſiderations to his Maieſtie, 2.

ſhops being attended by his Chauncellour, who ſhould be learned in the Civill law for his better inſtruction in points of formality, in the proceedings and courſes of their Courts: And for the ſame purpoſe ſhould Deanes and Archdeacons haue their Officialls and Commiſſaries to inable them to runne through the multiplicity of cauſes, to cut off or ſhorten delayes, which in all buſineſſe, eſpecially Eccleſiaſticall, are tedious and odious: and indeed none are more able in this caſe to aſſiſt them, and reduce cauſes into order, brevity, and paucity; as *Thomas Aquinas* ſaith, he compiled his ſummes to compoſe and compound controverſies, take up and take away all queſtions. And therefore I doe not a little wonder at D. *Cowell* who was a moſt able Civilian, that hee ſhould account Commiſſaries or *Officiales foraneos*, onely vſefull in petty peculiars, exempt from the juriſdiction of the Archdeacon, otherwiſe to be ſuperfluous and a needleſſe vexation and oppreſſion to the Countrey: ſurely hee meant it of ſome ſuch ſcandalous Courts as *Duarenus* (another learned Civillian) complaines of. *Auditoria Vicariorum & officialium Epiſcoporum, quæcunque profana tribunalia, impoſturis & ſtrophis forenſibus, longè ſuperant*: but let him thinke what hee will, I am ſure wee ſee of what good uſe they are, and yet they are not Lay Elders of the Church.

Thomas Aquin. præfac. to his ſummes.

D. Cowel. interpretatio verb. Commiſſary.

Duaren. de benef. & officijs Eccleſ.

Exception 2. *Excep.* 2. Is, that the power of juriſdiction Eccleſiaſticall, cannot be granted to Civilians, that are meere Laymen.

I could ſoone anſwer this exception, by denying them to be meere Lay men, and ſo I would, if I had no other way to avoyd it. But I am willing to giue them ſatisfaction, and not to cavill, and therefore will anſwer punctually: and that I may ſo doe, and they ſo apprehend it, let them but conſider with me a two-fold power of Eccleſiaſticall Iuriſdiction, Ordinary, and Delegate; the later and leſſer of which, may be lawfully granted to them; eſpecially

Lindwood. lib. 5. tit. ne prælati vicar. verb. ad firmam.

eſpecially, if wee admit the differences and degrees of their commiſſion, which are approved and practiſed in our Church government; both in relation to the power that grants them, and in reſpect to the extent of the grant. Firſt for the power granting them, they are all originally derived from the Crowne; but ſome haue their power more immediately, as the high Commiſſion haue it vnder the broad Seale: others receiue it more mediately, from their Biſhops, Deanes or Arch-Deacons: ſo for the largeneſſe of the Commiſſion, which is *ad vniverſitatem cauſarum tanquam Ordinarius*, as the audience of high Commiſſion (and not without good reaſon, ſince no cauſe is to be there determined, at leaſt not ſentenced, without the conſent of foure of the *Quorum*, which muſt be, as I am informed, Biſhops:) There is alſo a ſpeciall Commiſſion of Oyer and Terminer, in ſome particular cauſes; and laſtly, a Commiſſion, which, according to Law, is *reſtricta ad inſtantia*, which *Linwood* Officiall of *Canterbury* ſaith, doth belong *officialibus principalibus*, which wee call Chancellours: Yet I doe not beleeue (by his leaue) that they are ſo reſtrayned, as to a bare cognition, without a definitiue ſentence, though the phraſe, that is vſed to expreſſe buſines of inſtance, be, matters of Eccleſiaſticall cognizance; for, *Cognitio non eſt jurisdictio*, eſpecially now ſince the Lawes haue ordered, that if they be not in ſacred orders, they muſt be aſſiſted by a ſurrogate, who is a Miniſter, and hee is to pronounce ſentence as principall Iudge; which practice hath made ſome of opinion, that anciently they were aſſiſtant to the ſurrogate, as aſſeſſours; which ſeemes probable, becauſe the exact knowledge of the Law is expected from an aſſeſſour, not from the principall Iudge (according to the moſt conſcionable Caſuiſts:) *Ignorantia juris non eſt peccatum in judice, ſed eſt in aſſeſſore*, as the Maſters of the Chancery, who are aſſeſſours to the Lord

Linwood l. 2. tit. de ſequeſt. verb. officialis.

Cujacius de orig. Iur. Civ. § Conſul.

Navar. de pecc. Indult. §. 7.

Chancellour or Keeper, there is required exact knowledge, though not in the ſuperiour Iudge, as in the aſ-
Cujacius obſer. lib. 23. c. 40. ſeſſors of the Prætor amongſt the *Romans*: *Si Prætor per imperitiam iuris iniquum ius ſtatuerit, non punitur; aſſeſſor eius punitur, quia adſeſſor ſe pro iuriſperito egit*: So that though this opinion be not true, becauſe ſurrogates are not of ſuch antiquity; yet I perſwade my ſelfe without any doubt, that they were, and ſtill are *tanquam aſſiſtentes aſſeſſores Epiſcopis & Archidiaconis*; though they haue alſo a delegated power. And this kinde and degree of Eccleſiaſticall power may be granted to them, though they be meere Laymen; and I beleeue our Church would not haue diſliked the *Geneva* government ſo much, if they would haue choſen ſuch for their Lay-Seigniours, as had knowledge in the Eccleſiaſticall Lawes; as if Doctor *Hottoman*, profeſſour there, and Reader of the Civill Law, had beene joyned with reverend *Beza*, then Diuinity Reader.

Excep. 3. Another Exception of like nature and moment, ariſing from the former, is, That vnder the colour of a delegated juriſdiction, they take vpon them Epiſcopall juriſdiction, and performe all the offices of a Biſhop, in relation to Eccleſiaſticall government.

This Exception is not peremptory, but dilatory and declinatory, full of impertinent ſurpluſſage, vrging nothing, or that which is falſe; for no man will vndertake to anſwer what they doe, but what they ſhould doe: *iure noſtro Eccleſiaſtico*, I am ſure *iure noſtro Canonico Anglicano*, publickly knowne, and by the old Canon Law which may here be practiſed, (where it is not contrary to
25. Hen. 8. c. 3. Summa bull. ſrij in pio 4. the Lawes of the Land) they are not to exerciſe any ſuch power, as doth perſonally belong to a Biſhop, either as he is Diœceſane, or as he is Ordinary, *in puris ſpiritualibus*: neither doe I finde, that ever any Vicar did vſurpe or deſire any ſuch power, but onely Cardinall *Wolſie*, who deſired

desired *Clement* the seventh *suo vicario vniversale in Francia, in Angliterra, & in Germania, mentre stava in prigione,* his Vicar generall in *France, England* and *Germany* during his imprisonment; which he could not doe by Law, being his Ordinary and suspended, if not *ab officio*, yet *a beneficio*: and if it had beene lawfull, yet the Pope had betrayed his weakenesse much to grant it, with that condition, during the time of his imprisonment; for the Cardinall would without doubt haue endeavoured to keepe him there still, to continue his vicarship. And moreover this, I finde that by the Canon Law, *sede vacante*, the Deane or Chapter is successour, or rather administratour to the Bishops in their jurisdiction, and guardian of the spiritualties; and no marvell, for they are called *fratres Episcopi, Cardinales Papæ*; they can dispence *in causis Episcopo reservatis*, and call Convocations, to which the Bishops Vicar may not be admitted; *& possunt condere & revocare statuta*. And during the life of the Bishop, the Arch-deacon is his Vicar *iure* (as *Zerola*) *vicarius natus*, (as *Hostiensis*) which they vnderstand in respect of jurisdiction *in spiritualibus*; for not they, but the *Archipresbyter* is Vicar *in divinis*, which is, *in spiritualibus*, in relation to the power of order: So that you see, they take not any such ordinary power vpon them, but leaue it to the Bishops, and their most naturall and lawfull Vicars in that power; and yet they may be their Vicars *in Pontificalibus* (as the Canonists expresse it) which is, in those causes that belong to their Sees, as they haue peculiar and prerogatiue Courts; and such may be Laymen according to the most moderate moderne Decretists; *Syndicos* (saith *Duarenus*) *siue defensores, & apocrisiarios siue responsales laicos posse esse*; though by the old Canon Law *Vicarius Episcopi debet esse Clericus*. And it is counted one of the insolent rare actions of the Popes, *causas Ecclesiasticas Laicis delegare*: This jurisdiction they may haue

Guiccardin. hist. lib. 18.

Lalius Zecchius de prærog. capitul. §. 13.

Zerola in prax. Episc. verb. Archid.

Formula visitationis Colonensis.

Duarenus de officijs Eccl. l. 1. c. 19.

haue without any trenching vpon the office of a Biſhop in his perſonall juriſdiction, which I conceiue cannot be delegated to a lay perſon; being that juriſdiction, whereby he doth exerciſe and execute his correctiue, coercitiue, coactiue power, which is the inſtrument of his paſtorall paternall care over his Clergie, and proceeds from the power of conſecrated order, and is inſeparably vnited to it: which power, I finde fully, yet briefly expreſſed by S^t *Cyprian*, ſpeaking of a contumacious Deacon to his Biſhop; he adviſeth the Biſhop, *vigore Epiſcopalis cathedræ aut deponas eum aut abſtineas*, either to degrade or ſuſpend him; neither of theſe will a Lay delegate doe; yet I grant he may ſuſpend, if not *ab officio*, yet *a beneficio*. And for their viſitations, which are an act of ordinary juriſdiction, they performe them not *ex officio*, but by a ſpeciall commiſſion. And for the forme and force of their inquiſition in them, it is not generall concerning the doctrine and manners of the Clergie, but directed and reſtrained according to the Biſhops Articles, and without requiring an oath of the party preſented; *viſitatores interrogabunt abſque exactione iuramenti*; yet I doe not diſaproue that an oath ſhould be required vpon a fame, becauſe it reſpects as much the purgation, as the conviction of the jurant.

Durand. de ꝛ-vig. Iuriſ. Eccl. Con. 2.

Cypr. Epiſt. Rogat. Epiſc.

Formula viſit. Diœceſis Colonenſis.

And for the ſentence of excommunication, which ſome make the proceſſe of ſpirituall Courts, in point of contumacy; I am not able, I confeſſe, fully to ſatisfie in that point, but I dare ſubſcribe to what iudicious Biſhop *Bilſon* ſaith of it, to cleare it; who, I am ſure, could and would ſay as much in the behalfe of Eccleſiaſticall officers as any Biſhop of his time, who ſpeaking of the power of Excommunication, ſaith, *Nequaquam ſibi clavium poteſtatem aſſumunt, ſed pœnam ob contumaciam infligunt, quâ omnes illæ animadverſiones continentur, quæ legibus in eos ſancitæ ſunt, qui claves Eccleſiæ temerè contemnunt, quocunque*

De perpetua guber. Eccl. cap. 14.

cunque nomine appelletur, ſive ſuſpenſio, ſive condemnatio, aut excommunicatio nil refert, dummodo ne poteſtatem hanc divino, ſed humano iure ſibi vendicent, nil cauſæ tunc eſt, quin Iudices civiles delinquentem in pœnam Canonis incidiſſe declarent. But the maine ground of theſe, and ſuch like exceptions, is, becauſe Civilians are not in order with vs, as moſt Canoniſts be beyond the Seas, (though they haue no title, and are but *Presbyteri Vtopiani*, as *Duarenus* cals ſuch) if then our Eccleſiaſticall officers were all in orders, as ſome of them are, then they could not with any reaſon except againſt them for Lay-men, no more then they can againſt the Pontificiall Canoniſts, who haue farre more Eccleſiaſticall power, eſpecially the moderne Legiſts, and are as able to judge of hereſie, as the Duke of *Bavaria* vnder *Zachary*, who condemned *Virgilius* Biſhop of *Saltzburge* of hereſie, becauſe he affirmed, that there were *Antipodes*; when as *Iſidorus Hiſpalenſis* was not condemned for holding hell to be at the *Antipodes*, neere three hundred yeares before. Yet theſe are the only men that are now judges of hereſie, which makes modeſt *Melchior Canus* complaine, *Non video quonam conſilio in cognitione hæreſeos, partes poſtremæ, ne dicam nullæ theologis permittantur; juriſconſultis verò vel primæ, vel etiam omnes.* When as with vs, not our Chancellours nor Commiſſaries, nor our Biſhops alone may determine of hereſie: and yet I beleeue any of them haue as infallible aſſurance of truth, as immediate vocation, commiſſion, aſſiſtance by inſpiration, as all they; but onely they are in orders, ours are not; as the twelue auditors of the overruling Court of the *Rota* are the Popes Chaplaines by their office, (as *Lelius Zecchius de auditoribus Rotæ*) and ſo are thoſe irrefragable referendaries: and the Popes finde great good in having them in orders; for you ſhall not find, but the Canoniſts haue alwayes ſtood for the Popes prerogatiue; but onely *in Concilio Piſano Guicciardin*

Aventin. Annal. lib. 3.

Tho. Aquinas ſuppl. qu. 95. Art. 9.

Melchior Canus lib. 8. cap. 7.

1. Eliz. 1.

ciardine saith) they that were for the Councell which was called against *Iulius secundus*, by some of *Lewis* the twelfthes faction, *Che de canonisti autoritata del convocare i Concilii, nelle risedere solamente, persona del Pontifice.* But it was not so much the Canonists, as one principall one, which was *Philippus Decius* of *Millaine*, where the Councell began, who defended the cause, as appeares out of *Carolus Molinæus* his Annotations vpon *Decius* counsels; so that the Popes knew what they did, when they shewed and granted so many favours and priviledges to the Vniversitie of *Bononia*; as *Gregory* the ninth dedicates his Decretals to *Bononia*, so *Boniface* the eight his Sext, and *Iohn* the two and twentieth his Clementines, and Extravagants; thus they are formally qualified by orders; and becaus our Ecclesiasticall officers are not so, some take and make these exceptions: so that I will conclude this briefe Digression, with this wish, not altogether voyd of hope: I would more of our learned Civilians were Divines, or more of our judicious Divines Civilians, *Cum Theologia & Ius Canonicum fraternizent.*

Guicc. hist. l. 9.

Car. Mol. annot. in Decij Consil. 37.

Abbas Panorm. Lect. in Decr. 120.

THE

THE SECOND CONCLVSION.

That vnder the dominion and protection of this Civill State, this State Eccleſiaſticall is moſt likely to enjoy all thoſe rights that can any way belong vnto it.



Hough they that ſit at the tops and ſtearnes of States, amongſt all their great and graue cares, doe little regard the opinion or cenſure of private men, ſince they are not bound to giue a reaſon of their lawes, nor an account of their actions, their adminiſtration being abſolute. Yet if by theſe lawes, private perſons deſerue and ſuffer publick puniſhment, not only for offering private wrongs, but alſo for with-holding particular rights: ſurely theſe law-makers and Adminiſtrators of juſtice, that will not ſuffer injuries vnpuniſhed, will be ſo farre from doing wrong, though it be but to poore and private men, that they will feare, though they cannot flie the ſuſpition of it, and be as carefull to obſerue a juſt and geometricall proportion in the diſtribution of dues and duties. Now if private and common ſubjects are not onely ſecure from injuries, but alſo ac-

cording to due deſert publickly regarded, and rewarded for their particular ſervice to the common-wealth, though their ayme be but at their owne perſonall and private profit; one may ſafely conjecture, that the publick and politick parts and pillars, the diſtinct and ſetled ſocieties of that State ſhall be as ſtrongly ſecured from detriment by wrongs, and as freely and fully favoured by advancement in rights. Yea it may be fully preſumed, where a State is ſo framed, that they are all vnited in one head, without dependance and ſubordination to each other. As in a Monarchie, which with an equall impartiall proportion, giues protection, diſtributes rewards; when as if their vnion and communion be continued by a collatorall relation, and mutualitie of members, their equality of power and deſert would breed emulation, if not envie and indignation, and make them ingratefull to each other, if they be not injurious. As it is where the government is Ariſtocraticall, which may be ſeene in the envious oſtraciſmes of the *Athenian*, *Epheſian*, *Venetian* States: *Thucydides hiſtoricus in exilium pulſus erat, quæ fortuna optimo cuique Optimatum Athenis accidere ſolet,* (as *Paulus Iovius* ſaith of the *Venetian* common-wealth.) *Neminem temerè ex Optimatibus qui vel inſigni virtute, vel ſpiritu in gerendis rebus, cæteris antecellat, potentem & clarum fieri patiuntur.* So that it is but a perverſe and peeviſh paradox in *Machivell*, to hold, that a princely Monarch vſes to be more vngratefull, than free and popular States, when as they either returne malice and miſchiefe in reward of ſingular merits; or if ſuſpicion, which he makes one ground of ingratitude, doe not make them, at leaſt to ſuſpend them by a relegation; yet avarice, which is his other ground, will make them really ingratefull, though formally they pretend a reward. For if they giue any thing, it will not be worth the taking, *in ſtatu populari & liberis civitatibus, præmia liberalitatis plus habent honoris*

Ζηλῶ γὰρ φθόνῳ τοὺς ἀεὶ τὰς ὑπερόχους *Ariſt. lib. 2. c. 12.*

Cicero de Orat. lib. 2.

Iovius Hiſtor. lib. 1.

Machiavel. diſcurſ. l. 1 c. 29.

quàm

quàm vtilitatis; they beſtow nothing but vaine, vaniſhing, empty, and aërie titles, which are blowne vp, blowne out, and blowne away with the breath and voyce of the vulgar that gaue them, ſo that they doe him that is gratifyed no right and reall good: οὐκ ἔχει φάυλα δοῦναι, ὃ δεῖς ὁμολογεῖ δίδοσθαι φαύλον; it is not gratifying to giue things that are contemptible, for no man will confeſſe that hee hath neede of them, but theſe toyiſh titles doe men more harme then their ingratitude could. For titles without proportionable eſtates; doe not onely fall vnder the miſerable ſuccour of other mens pittie, but are alſo a temptation to provoke all men to contemne them. But one maine reaſon of this difference in rewarding is, that Ariſtocracies reſpect themſelues in it, when as a Monarch to whom all giue due and loyall reſpects, doth powerfully protect and royally reward with reſpect to all. But as all our moderne Monarchies are diſtinguiſhed into ſocieties, as in ſome Kingdomes there are fiue States; as in *Denmarke*, *France*, and in *Brittaine* three, which as they are ſubordinate and inferiour one to another, ſo the ſupreame Governour doth regard and reſpect them with different degrees of favour and care, with conſideration of what conſequence they are to him, and ſo proportions penſions, and of what need they ſtand of him; and ſo affords protection, ſearching into the ſeverall circumſtances of their imployments and abilities, as of what vſe they are in point of neceſſitie, vtilitie, and honour. Now all theſe three States are neceſſary, profitable, and for honour of the Prince, but not equally at any time, nor conſtantly at all times; neither in reſpect of peace or warre, domeſtique or forraine: ſo that as one ſtate doth make it ſelfe more neceſſary in relation to an extraordinary time of neede, ſo another may be more profitable in the continuall ſupplying of ordinary expences: and the third may bee more for the honour of a King, both in ordinary and extraor-

Bodinus de re-pub. lib 5. cap 4.

Ariſt. Rhet. lib. 2. cap. 9.

Theſaurus Pol. Apoteleſma 50.

extraordinary actions. Now a King that preferres his honour before his profit, at all times will more reſpect that ſtate which ſtands ſtrongeſt for his honour at all times, then that which is more profitable at all times; ſo will hee more eſteeme that which certainely ſupplies his ordinary continuall charges, then that which may bee more neceſſary, *ſi cœlum ruat*, vpon an extraordinary vnlooked for occaſion: becauſe wiſedome is not imployed in preventing, and providing againſt what may be in poſſibility, but againſt what is likely in probabilitie: ſo that in the naturall body though there bee more continuall intercourſe and mutuation of needfull ſupplies reciprocally betwixt the head and the heart, eſpecially from the heart: yet thoſe externall members that are neareſt vnited to the head, haue more externall honour, as the eyes, the eares: ſo in the body politique, there is a conſtant interchange of ſuccours and ſupplies betweene the ſtate Civill and Eccleſiaſticall, yet the ſtate of the Nobilitie eſpecially taken for the Councell, is of higheſt aſſiſtance, which are as it were the eyes and eares of the King in publique providence and intelligence, (as *Dion Chryſoſtomus*) Πέρσης ἕνα πίνα ἔσχεν ὀφθαλμὸν βασιλέως λεγόμενον.

His Majeſties inſtructions to the Biſhops. 1626.

περὶ Βασιλείας. *Zeizes Hiſtor. Clibian.* 1.

Theſe principall Peeres that are ſo cloſely vnited to the head, that they communicate with it in the moſt ſecret and ſerious adviſings, deſervedly enjoy the faireſt fortunes and favours; for it is great reaſon that Kings ſhould heape and beſtow vpon the watch-towers of the ſtate the greateſt and higheſt honours in the ſtate: that as they are neareſt, ſo they may be deareſt, being his right truſty and well beloved Councellours. And their imployment is no more immediately eminent then the truſt of it troubleſome and dangerous.

§ 2 And the next ſtate in high eſtimation with Chriſtian Protentates, and with many the moſt eſteemed in all reſpects is their Clergie, the ſtate Eccleſiaſticall; vpon which

which they haue heaped favours to the very exhausting of their treasures. *Imperium amore religionis semetipsum exhausisse, &c.* I am not able to reach the reason in point of state, of that extraordinary extravagant large liberalitie: but thus much I am able to compasse and conceiue, and shall endeavour to make it plaine; that whatsoeuer right and reason any King in *Europe* hath had for this 400 yeares to vphold his Clergie, and conferre favours and honours vpon it; our present supreame head of our Civill state hath all that right, and more reason to bee as royally indulgent to our present state Ecclesiasticall, as none can deny: but as he that hath chiefty of power over the whole body of the Common-wealth, may rightly and justly favour, bestow rewards, priviledges and power vpon any publique societie, or private person in the same: so none will affirme that all that haue supreame power haue the same equalitie of right, to endow with priviledges, or inrich with rewards; because that all doe grant that all Kings haue not Dominion in the same equall altitude and latitude, and so cannot so highly advance in priviledges, least they surmount their petty prerogatiue: nor so largely giue them power and revenewes, lest their extention shorten their owne. And the grounds of this inequalitie are diverse, in handling of which I will neither follow *Machivell*, nor *Iunius Brutus*; because I finde them to runne into two extreames, the one granting it to all out of the looseneſſe of a wanton wit; the other denying it to all, being carried by the stream of innumerous particular authorities; & that because, as the other wanted conscience, so he wanted experience: or rather because *Machivell* lived when all Princes in *Italie* claimed and vsurped equall and full power, and so writ what they did, not what they should doe; and *Brutus* might endeavour to diminish the power of all, because he would not haue the *French* King haue so much, which he might thinke too much for the present:

Tacitus Histor. lib. 2.

preſent: if hee conſidered it with the times before *Lewis* the eleventh, wherein as the Peeres and Parliaments had too much, ſo the Kings had too little: ſo that their difference of Dominion is not according to that fullneſſe Princes can make it when they are once in poſſeſſion of a Kingdome; nor according to that diminution wherewith diſloyall ſubjects impaire it, when they threaten and raiſe a rebellion; but it is according to the ſeverall meanes whereby they attaine or obtaine their Kingdome. Now all ſupreame Dominion in a Monarchie is attained by conqueſt or ſucceſſion, or obtained by election: Kings that come to it by the right of conqueſt may haue as much power as they will take; they make their owne Charters: thoſe that come to it by ſucceſſion haue as much power as their anceſtours, accepting of ſuch lawes as they finde; thoſe that haue it by bequeſt, and are adopted heires (for adoption is good by laſt will and teſtament) haue the ſame right that a naturall ſucceſſour hath, if the adoption ſtand good. As the Kingdome of *France* was giuen to *Edward* the third by *Charles* the ſixt: but thoſe that are called to it onely by election, their power is reſtrained and curbed with cautionary conditions, and ſtands limited by them.

Cujacius obſerv. lib. 7. cap. 7.

Hottoman. illuſtr. queſt. 1.

Now if all theſe haue great power in their ſupreame government, by any one of theſe rights to attaine a Kingdome; ſurely hee that hath it by all theſe rights conjoyned, hath more power then any hath that is intituled to it but by one, eſpecially by election. But our preſent gratious Soveraigne hath it by lineall ſucceſſion from an abſolute Conquerour, which was confirmed to his father of pious memory, by the Nuncupatiue will of his ſacred predeceſſor, who then adopted him, and all was made ſure vnto him by the electiue aſſent of the ſupreame Nobility, without any croſſe-courſe conditions, (as falls out) when the ſouldiers or people elect. And as it is plaine

Briſſonius de Regno Perſico. lib. 1.

Anno Iacobi: A juſt recognition of an vndoubted ſucceſſion.

plaine that hee holds by all theſe, ſo I doe conceiue I could make it appeare, that moſt Kings in Chriſtendome hold primarily and principally but by one of theſe, and that of leaſt power. But that I am loath to touch the tickliſh and tender titles of forraine Potentates; neither will I ſpeake any thing of them as their ſtates now ſtand, but onely in a word ſhew what anciently they were: for in my poore judgement their government may bee as good and lawfull, if they haue had the power and opportunity to caſt off and free themſelues from theſe bridles and curbes of government: for not the moſt limited power, but the beſt rectified is ſafeſt both for Prince and people.

§ 3 To ſhew then how it was with them heretofore, and to begin with the Empire after it was tranſlated to the *Almaine*. Long hath that Empire continued by the election of the high Chamber of the *Septem-viri*, the ſeaven ſelected Electors of *Germany*; and ſome of the beſt Emperours haue ſo well liked it, that they haue not onely beene willing to take the promiſſarie oath containing divers ſtrict conditions, but haue alſo granted them new free Chatters, and large prerogatiues: as *Charles* the 4. in his *Bulla aurea*, and ſo held ſo looſe and light a hand over them, that one of the Electors, the Biſhop of *Ments*, in the Councell at *Franckford*, ſaid, the government was Ariſtocraticall, which might bee well taken if he meant it with reference to the Councell. The Kingdome of *France* ſeemes not to haue beene anciently ſo abſolute and vnreſtrained as now it is, for the twelue Peeres of *France*, *qui ſunt ut in Germania principes electores*, had not onely royall priuiledges, and did not owe ſimple ſubjection, but reſpectiue homage; and had a regall authority in their ſeverall Prouinces, and the command of the chiefe forces: but alſo had the power, if not to elect their King, (as *Nauclerus* ſaith) and as it ſeemes true, becauſe they haue

Clapmarius de A canis reipub. lib. 5. cap. 20. Cominaus lib. 10. Comment. Grands di Francia la Briglia in mano. Guicciardino hiſt. lib. 16. Ieremie. 38. 5.

depoſed them; yet to determine, when there is no great doubt who ſhall ſucceed: and their ſetting alwayes vpon an heire male (which is the courſe of electiue ſtate) ſhewes it to bee ſomewhat electiue; for the reſtraining of it to the heire male, did not primarily proceed from the Salique law, becauſe many of their Kings haue beene *Lorraines*; which Dukes, (the *French* Civilians ſay) doe not obſerue, nor are vnder the Salique law: but if it bee not electiue, it ſeemes not to be ſo cleare a ſucceſſion, becauſe it is a maſculine feud entayled vpon the heire male: yea the predominant extravigant power of the *Pariſian* Parliament ſeemes to intimate, that the ancient ſtate was not ſo free and abſolute a Monarchie; for they called in the Kings edicts, ſent forth the contrary: and no appeale lay from their ſentence. *Contra illud tantum ſupplicare licet*, a petition of right onely was permitted; ſo that this ſtate which is moſt abſolute of all others, ſeeemes to haue been anciently not ſo free and uncontroleable in its government, as a free Monarchie ought to be. The next is the Kingdome of *Spaine*, which hath of old beene ſo diſquieted with the continuall incurſions and invaſions of the *Moores* and *Saracens* from the South, and *Gothes* from the North, that it hath ſcarce time to ſettle, as water toſſed. But when it did pitch vpon the forme of a Monarchie, it was electiue, as appeares out of the Councell of *Tolledo*; *Si quis ad Regiæ Majeſtatis pervenire faſtigia ambit abſque electione nobilitatis Anathema ſit*: yea and in their latter dayes their forme of inauguration, doth import and imply the ſame: for thus it runnes, *Nos qui vale mos, tanto comme vos, y podemos mas que vos, vos elegemos. Rey, con eſtas, y eſtas conditiones, intra vos, y nos*: yea and the Iuſtice of *Aragon* hath had as much power as ever the Parliament of *Paris*; as in plaine, not onely in their vnlimited immunities, but alſo the power they vſed againſt the Kings edicts: as may bee ſeene in their writs, called

Hottoman. apollogia Catholica. §. 6.

Gymerus Comment. in prag. ſanct. tit. de autoritate Conciliorum.

Concil. Toletan. 5. cap. 3.

Hieronymus de Blanca de Hiſt. regimine.

called *los manifeſtados, y iure firmos*; from which power, *Idem ibidem.*
though the Inquiſition haue freed the Kings ſince *Fardi-* *Thuan. hiſt. l. 9.*
nando: yet I doe not conceiue how that ſtate ſhould bee more free then before, becauſe it is vnder the power of a tyrannicall Inquiſition. So that the Kings of *Spaine* had done more providently in preventing their prevailing greatneſſe, if wee conſider their domeſtique freedome in government; though their advancement may advantage them to bring forraine ſtates vnder their ſervitude. But it was hard to hinder them from at leaſt ſo much power as they were able to take from the other, ſo that *Tullie* had no great reaſon to aske *Atticus*, (and that in Greeke as a ſecret, not to bee vnderſtood of any that ſhould inter- *Ad Atticum, lib.*
cept his letters) εἰ ἐυλαβετέον τὸν κατελύοντα μὴ ἀρξηται, few *9. epiſt. 4.*
doubt it, and this may bee moſt vnqueſtionable with *Spaine*, witneſſe *Naples* and *Millaine*. Theſe Inquiſitors are like Ephori in the *Spartaine* republique, whoſe Kings are obſerved to haue the moſt reſtrained power: for the *Thucydides. l. 6.*
chiefe of theſe Inquiſitors hath a great power over the King in his owne Court. *Inquiſitor generalis, qui Aulam Regiam ſequitur, cum adjunctis conciliarijs Eccleſiaſtici or-* *Theſaurus Po-*
dinis poteſtatem contra ipſum Regem vſurpari poteſt: ſo that *lit. Apotel. 63.*
by all this it is plaine, that the *Spaniſh* Monarchie hath not long beene a free Monarchie at home. But that which makes moſt, to proue theſe ſtates not abſolute, is becauſe an appeale will lie from any of them to the Optimates and orders of their Kingdomes, for *extrema provocatio* is one principle; *inter ſumma iura imperij: In imperio tamen* *Clapmarius de*
Germanico, (vt teſtantur pragmatici) ad ſacram & ſuper- *Arcanis reipub.*
nam Cameram provocatur, apud Gallos ad octo curias maio- *lib. 2. cap. 19.*
res, apud Hiſpanos ad quatuor curias; even as a generall Councell is aboue the Pope being electiue. As for the other ſtates of European Monarchies, without all queſtion they are at this preſent electiue; as *Poland* which made their King *Mieciſlaus* ſend *Lampartus* Biſhop of *Craco-*

via to Pope *Benedict* the ſeaventh, *vt Regem ſe Polonorum & poſteros ſuos eſſe iuberet, ſed ea res propter iuſtas cauſas, ad aliquod tempus dilata fuit*: yea, it was never obtained, but it ſtill continues electiue; *Moderata eſt principis Poloniæ poteſtas, quia non naturæ legibus in paternum regnum ſuccedit, ſed communibus ſuffragiis ſenatorii & equeſtris ordinis & publica exclamatione uobilitatis eligitur. Hungary* alſo is electiue, although the *Spaniard* hath intailed it upon the match with the *Infanta*, which will eaſily bee cut off, and ſuffer a recovery into the former freedome. *In Hungaria liberam habent electionem, & inde ab eius morta proceri Budæ conveniunt*: I might ſhew the like of *Denmarke*, but no more of that, I know not how this may be taken; but I hope well, becauſe in this I deliver onely what is licenced intelligence, even as *Honorius* and *Theodoſius* did interdict, *ne alicuius regni arcana ſcrutarentur*; but it was with this Proviſo: *Legatus tamen reverſus omnia narrare debet.*

Herbert. hiſtor. Polonia lib. 1.

Thuanus hiſt. lib. 506.

Cominaus lib. 10. Coment.

Guiccardino Hypomneſes Polit. 106.

§ 4 Theſe inſtances are ſufficient to proue that our preſent Prince hath moſt vnreſiſtible power, and ſo moſt vnreſtrained right to favour, and freely beſtow immunities, priviledges, and revenewes vpon any ſingle ſociety, or ſingular perſon within his Dominions. Now the next thing to bee prooved is, that as hee hath more right to ſhew favour to what ſtate hee will; ſo hee hath more reaſon then they all to favour his Clergie moſt. This government of our King is not more free in it ſelfe then it is freely and willingly ſuſtained; which ſhewes that it is the ancient equall, and as it were the moſt naturall government of this Iland, and therefore the power is moſt right; becauſe naturallized by cuſtome when as in other Kingdomes, yea in many pettie particular ſtates; that little power they haue improoved by force, they keepe and exerciſe by the ſame meanes. Hence it is that they dare onely truſt forrainers to be their guards: as the

French

French haue the *Scots*, and *Suitzers*; the Dukes of *Florence*, the low Dutch, which choyse doth either proceed from tyranny in the Kings, or perfidiousnes in the nation, ὁ γὰρ βασιλεύων τυραννίδι, αἰτεῖ τὴν φυλακὴν, as for instance, the first Dukes of *Florence* were esteemed no lesse, for it was libell-wise written over the doore of *Cosmus, De Medices* (the first Duke) where he was sicke, and tooke physick, *qui Medicè vivit, miserè vivit*, which they vnderstood of the *Medicean* tyrannie, both in respect of his feares, and their wrongs in his oppression. And in this age there were some, that would haue brought an *Italian* guard into *France* and *Scotland*, but it was when they aspired to vsurpe them both; *Guisiani Italorum custodias quòd assuetis negotiis suis, non satis fiderent, adhibent, sui potiùs quàm regni, aut regis munimento*; when as our Kings haue found out by long experience that to be true, which *Dion Chrysostome* told *Trajane* the Emperour, τὸ οὐκ ἔγειν ἀλλὰ φυλακὴ πλὴν ἀγαπᾶσθαι, so that they regard no guard, but the loue of the subject. But to returne: It is no small encouragement to me, before I argue it in any point, and a strong argument for me, that a sacred Soueraigne hath and doth proue it true, in his most royall and religious practice. For I doe not beleeue, that there hath beene any Emperour, Monarch, or Potentate since *Charles* the first and the great, that did ever so truly and constantly fauour, and carefully protect a poore Clergie as hee hath done. But let vs consider what great reason of this fauour there is: wherein I will not search vainly into his Majesties particular reasons, for I should not be able to finde them out, because a Kings heart is not to be sounded and searched by a private head, that is not able to conceiue the heigth of their ends: but I will discourse of it a hee is our King, if from a single relation, there doe arise as singular respect, surely a double portion of respect will follow a double relation. Now this Aristocraticall Cler-

Arist. Rhet. lib. 1. cap. 2.

Thuan. hist. lib. 23.

Dion Chrysost. περὶ Βασιλείας γ.

gie haue not onely relation to their Prince, as hee is a crowned King and they his lawfull ſubjects, but alſo as hee is the Lords annoynted, defender of the faith, according to his juſt title (as his Maieſtie pleaſes to ſpeake in his declaration before the Articles.) For they alſo are the Lords annoynted, deliuering that faith; and the *Primate* of them, the immediate inſtrument of his conſecration; ſo that as by the crowning, they are by right his ſubiects, ſo this annoynting of God, ſuperinduceth a brotherhood betwixt Kings and Biſhops (as S^r *Francis Bacon* in his Booke to King *Iames*) for this relation is onely ancient in our Kings amongſt the Princes of Chriſtendome; for though, as our Soveraigne is crowned by the Archbiſhop of *Canterbury*, ſo the Emperours when they were Kings of *France*, began to be annoynted and crowned by the Archbiſhops of *Mentz*, *Collen*, and *Trier*, as they were Emperours; and by the Archbiſhop of *Rhemes*, as they were Kings of *France*. Yet the Kings of *France* of the firſt line, at leaſt, were not annoynted (as one of the freeſt Hiſtorians confeſſes) *De la primiere Lignèe oinct ny ſacre à Rhemes*. And though the Kings of *Spaine* are crowned by the Arch-biſhop of *Tolledo*, the Kings of *Denmarke* by the Arch-biſhop of *Vpſale*, the Kings of *Polonia* by the Arch-biſhop of *Gueſire*, the Kings of *Hungarie* by the Arch-biſhop of *Strigon*, the Kings of *Navarre* by the Biſhop of *Pampolune*, yet none of them were anciently annoynted. Now it cannot be denied, but as this reall relation doth more peculiar and appropriate the State Eccleſiaſtick to our King, ſo it makes him not onely the ſupreame head and governour, but alſo the chiefe guide and guardian: for by it he is more than a meere Lay-man; hee is a mixt perſon, having ſupreame Eccleſiaſtick as well as Civill government, *Reges ſancto oleo vncti ſunt ſpiritualis iuriſdictionis capaces*. Which ſentence was applied to our King, in the time of *Edward* the

Guard du Hallon des aſſonxes l. 2.

Vid. Legibus ſancti Edwardi.

the third: And *Guymer* in his Comment on the pragmaticall ſanction of *France*, is peremptorie *quòd Reges inuncti non ſunt meri Laici*; and addes, *inde Reges Angliæ conferunt beneficia*. So that by this is there ſome addition granted to the power of Princes over the Church. Though the old gloſſe vpon the *Clementines* avouch, *quòd vnctio nil addit ad poteſtatem Imperatoris*, which the Gregorian edition of the Common Law did well to diſlike, but they ſhould haue done better, not to haue given a worſe. And if it adde to their power over the Church, then as they haue more right by it, ſo they haue more reaſon from it to doe what good they pleaſe for the Clergie. So that, doe but conſider the quality and qualifications of our Kings perſon, to doe for his Clergie, and you will ſay, he hath greateſt reaſon of any Prince. Conſider againe the reaſons on the part of the preſent State Eccleſiaſticall, and you ſhall finde, that they deſerue more of their Prince, than any Clergie theſe foure hundred yeares.

33. Edw. 3. tit. Aide le Roy. Grymerus tit. 12. §. 9.

Clement. l. 4. tit. 6. verbo Regis.

§. 5. But I muſt preſuppoſe before that will be granted, that our *Monarch* of great *Brittaine* hath not any reaſon to giue or beſtow meanes and revenues vpon any forraine State Eccleſiaſticall. No Prince hath reaſon to beſtow his free favours vpon any, over whom hee hath (for the preſent) no right to rule, nor hath heretofore promiſed it, neither by himſelfe, or by his predeceſſours, and thereby bound himſelfe to farther and favour them. So that, though the Romane Clergie doth claime and clamour for revenues and priviledges from our King, yet as they haue no right to claime them, ſo they haue no reaſon to expect them: for they are ſo farre from being his deſerving domeſtick ſubiects, that they are his deadly enemies, though they be imbred and homebred. They haue not then any right; for neither our K. nor any of his lawfull predeceſſours, did ever binde themſelues to any ſuch perſor-

performances. Later & better learned writers of the Romiſh faction, finding by the carefull and curious examination of ſundry paſſages in infinite interpreters, how hard a thing it was, to proue their vniverſall ſupremacie *in temporalibus*, by direct evidence out of Gods word, reſolue to proue it by Charter-grant, and priviledge from Princes pieties, as *Auguſtinus Steucus* (*Librarian* to Pope *Paul* the third) ſets downe the claime the Pope laid to all the kingdomes in Chriſtendome, grounding all from the particular grants from the Kings, but eſpecially *Boniface* the eights letter of Demands. As for inſtance, from *Conſtantine* the firſt and the beſt, one *Phocas* the firſt and the worſt, from the vniverſall gifts of thoſe vniverſall Emperours, they ground a generall right in all kingdomes. The *Bononian* Canoniſts deale cunningly, and ſeeme to deale ingenuouſly, playing the ſophiſters more than the ſycophants in this point, diſcourſing of this donation of *Conſtantine*; for they lay it downe as a preſuppoſed preſumption in the Law: That there is ſuch a true deed, notwithſtanding there be no mention made of it in any part of the ſincere Civill Law. *Sed quæ notabiliter fiunt, ſpecialiter notanda ſunt.* But they never queſtion it *de facto*, but enquire *quo iure*, and, *an ſit revocabile*; and ſince they doe not full affirme, that he gaue it vp, will not ſo much as ſhew the falſitie of it, but referre all to the moſt judicious and modeſtly moderate amongſt them. But for *Phocas* his grant, a faithleſſe vſurping tyrant, I leaue it to be judged of, by thoſe that chuſe to meaſure claimes and titles, by the line of equity, and not by the Laſt of ambition. Yet thus I will inferre againſt it, that a Charter granted as this was, chiefly vpon a ground of cunning, with a purpoſe to maintaine a plot, by partie, which was vndertaken and begun by fraud. might haue beene after revoaked by himſelfe, or anulled or repealed by his ſucceſſours. And farther I ſay, that though this

Covomuvias Duar. quæſt. c. 1 mem 9. Decius Conſil. 130.

grant

grant were authentick in all points, yet the Popes could haue no right to this king dome by it, becauſe this kingdome was excluded from the care, protection and providence of the Romane Empire, neere two hundred yeares before *Phocas*.. For *Ælius* L. Licutenant for *Valentimanus* in the parts of *France*, ſent word to the *Brittains*, that they were to looke for no more ayde from the Empire, which was fallen into faction, ſcarce able to ſupport it ſelfe, being thus abandoned, all lawes did free them from duty and dependance. But to make theſe generall grants the ſtronger, they pretend particular grants from our owne Kings, as from *Ina* King of the Weſt *Saxons*, that was indeed religious, and from King *Iohn*, that was impious, as well *ſans foye*, as his title was *ſans terre* (as the King of *France*, *Philip* the ſecond ſaid) *Iohannes nunquam fuit verus Rex*; neither of theſe binde our State; for the *Peter*-pence contributed to *Rome* by *Ina*, are called in the lawes of *Conatus*, *Larga Regis benignitas*: and in the abſtract (which is the beſt of the confeſſours and conquerours decrees) *Regis Eleemoſyna*, which imports not due nor duty, but charity, and the Popes to be his beads-man, not the King to be his homager. There were many manifeſt nullities in King *Iohns* grant, for he had no right to hold the Kingdome, and if he had held it by right, yet he could not grant any thing in prejudice of the whole State, without the conſent *Regni univerſitatis*, (as *Mathew Paris* tearmeth the Parliament) and a third mullitie is in the force of the grant, where, whatſoever is paſſed in the body of the grant, is reſumed by this *proviſo* in the concluſion, *Salvis nobis & hæredibus noſtris, Inſtitiis liberalitatibus & regalibus noſtris*: which being luckily inſerted ſalues all, and makes it abſolutely voyd. But the maine grant which *Baronius* relies vpon, is a donation from *Ethelulphus* King of the Weſt *Saxons* which ſeemes very lawfull, if it were (as he ſaith) *ſalubri*

Polyc. lib. 1. cap. 110.

Baronius Annal. 450.

Math. Weſt. 1216.

Math. Weſt: ibidem.

performances. Later & better learned writers of the Romiſh faction, finding by the carefull and curious examination of ſundry paſſages in infinite interpreters, how hard a thing it was, to proue their vniverſall ſupremacie *in temporalibus*, by direct evidence out of Gods word, reſolue to proue it by Charter-grant, and priviledge from Princes pieties, as *Auguſtinus Steucus* (*Librarian* to Pope *Paul* the third) ſets downe the claime the Pope laid to all the kingdomes in Chriſtendome, grounding all from the particular grants from the Kings, but eſpecially *Boniface* the eights letter of Demands. As for inſtance, from *Conſtantine* the firſt and the beſt, one *Phocas* the firſt and the worſt, from the vniverſall gifts of thoſe vniverſall Emperours, they ground a generall right in all kingdomes. The *Bononian* Canoniſts deale cunningly, and ſeeme to deale ingenuouſly, playing the ſophiſters more than the ſycophants in this point, diſcourſing of this donation of *Conſtantine*; for they lay it downe as a preſuppoſed preſumption in the Law: That there is ſuch a true deed, notwithſtanding there be no mention made of it in any part of the ſincere Civill Law. *Sed quæ notabiliter fiunt, ſpecialiter notanda ſunt.* But they never queſtion it *de facto*, but enquire *quo iure*, and, *an ſit revocabile*; and ſince they doe not full affirme, that he gaue it vp, will not ſo much as ſhew the falſitie of it, but referre all to the moſt judicious and modeſtly moderate amongſt them. But for *Phocas* his grant, a faithleſſe vſurping tyrant, I leaue it to be judged of, by thoſe that chuſe to meaſure claimes and titles, by the line of equity, and not by the Laſt of ambition. Yet thus I will inferre againſt it, that a Charter granted as this was, chiefly vpon a ground of cunning, with a purpoſe to maintaine a plot, by partie, which was vndertaken and begun by fraud, might haue beene after revoaked by himſelfe, or anulled or repealed by his ſucceſſours. And farther I ſay, that though this

Covomuvias Duar. quæſt. cap. mem 9. Decius Conſil. 130.

grant

grant were authentick in all points, yet the Popes could haue no right to this king dome by it, becauſe this kingdome was excluded from the care, protection and providence of the Romane Empire, neere two hundred yeares before *Phocas*.. For *Ælius* L. Licutenant for *Valentimanus* in the parts of *France*, ſent word to the *Britains*, that they were to looke for no more ayde from the Empire, which was fallen into faction, ſcarce able to ſupport it ſelfe, being thus abandoned, all lawes did free them from duty and dependance. But to make theſe generall grants the ſtronger, they pretend particular grants from our owne Kings, as from *Ina* King of the Weſt *Saxons*, that was indeed religious, and from King *Iohn*, that was impious, as well *ſans foye*, as his title was *ſans terre* (as the King of *France*, *Philip* the ſecond ſaid) *Iohannes nunquam fuit verus Rex*; neither of theſe binde our State; for the *Peter*-pence contributed to *Rome* by *Ina*, are called in the lawes of *Conatus*, *Larga Regis benignitas*: and in the abſtract (which is the beſt of the confeſſours and conquerours decrees) *Regis Eleemoſyna*, which imports not due nor duty, but charity, and the Popes to be his beads-man, not the King to be his homager. There were many manifeſt nullities in King *Iohns* grant, for he had no right to hold the Kingdome, and if he had held it by right, yet he could not grant any thing in prejudice of the whole State, without the conſent *Regni univerſitatis*, (as *Mathew Paris* tearmeth the Parliament) and a third mullitie is in the force of the grant, where, whatſoever is paſſed in the body of the grant, is reſumed by this *proviſo* in the concluſion, *Salvis nobis & heredibus noſtris, Iuſtitiis liberalitatibus & regalibus noſtris*: which being luckily inſerted ſalues all, and makes it abſolutely voyd. But the maine grant which *Baronius* relies vpon, is a donation from *Ethelulphus* King of the Weſt *Saxons* which ſeemes very lawfull, if it were (as he ſaith) *ſalubri conſilio*

Polyc. lib. 1. cap. 110.

Baronius Annal. 450.

Math. Weſt. 1216.

Math. Weſt: ibidem.

Baron Annal. Anno. 854.

consilio Episcoporum & Principum, but yet that deed (if wee tree it from being forged) was voyd, if you doe but consider amongst many other things, the incompetencie and incapacitie of the person, to whom the deed was made. Now *Baronius* is peremptory, that it was made to the immediate successour of *Leo* the fourth, which according to all the trueſt writers of the Popes liues, was *Iohn* the eight, which they conclude was a woman *fu vna donna natio de Inghilterra che vacata là ſede Apoſtolica, per la merte di Leon quarto, fu eletta per ſonno Pontifice di Roma* (as *Petro de Mexia*) and *Boccacio de las mugeres illuſtres*: the King might perhaps haue done much for his country woman, if he had knowne it, but ſhee was not capable to receiue ſuch a deed to her vſe, and therefore, the Iuriſts haue reaſon to make this queſtion, *Vtrum acta Iohannis octavi in papatu rata eſſe debent*: And if what ſhee did was voyd, what was done for her is not firme, being it was given, ſuppoſing ſhee was capable. So it is plaine, that this engine is not able to vphold this claime, being ſo looſe, and hanging together in the joynts like ſick mens dreames, ſhewing their inconſiderate inconſtant humours, their proofes being as weake as their imagination is ſtrong, all ſtanding vpon ſlender ſuppoſals, particular intereſt, making partiall. But they haue another ground for a preſumption of their right, becauſe ſome poore oppreſſed Princes haue deſired to hold their kingdomes from them, as ſome vſurpers ſought to obtaine dominions by their gift, who depoſe Kings, that they may diſpoſe of their kingdomes. But this is nothing, and they ſtand not vpon it, but when they haue nothing elſe to ſay. I doe not by this goe about to deny, that our Kings haue beene bountifull Benefactors to the *Roman* Clergie, but this onely I ſtand vpon, that they haue no reaſon to continue ſo ſtill, ſince they were never lawfully bound to it. Neither doe I deny, that any Prince ſhould conferre fa-

Petro de Mexia della ſilva cap. 9.

Hottoman. quaſt. illuſt. 17.

vours,

vours vpon ſome forraine Eccleſiaſticall State with this caution, that he be not prejudiced by the kindnes, & may haue ſo good vſe of their thankefulneſſe: As ſuppoſe any Prince ſhould be called into *Germany*, or *Italy*, or any other kingdom, by an oppreſſed State Eccleſiaſticall, that Prince may doe royally to inveſt them into their former ſpirituall poſſeſſions, and yet never impoveriſh or inſlaue his owne kingdome to them, and alſo binde them to him for protection. Thus did *Pipine*, *Charles* the great, *Lodovicus pius*, they releeved the *Roman* Clergie, and beſtowed very much vpon them in large territories, but they gaue them nothing in *France*, but onely what they recovered for them in *Italy*: it is then evident, that our King hath no reaſon to beſtow honour or power, revenues or priviledges vpon any forraine State Eccleſiaſticall; and it is as plaine, that he hath the greateſt reaſon of any Prince in Chriſtendome to beſtow them all vpon his owne domeſtick Clergie.

Dies nunquam tranſit, quin aliquod pium fecerit, ſed ita vt Francum non everteret: (vt de Severo Lampr.)

Guicc. lib. 4. hiſt. Ital.

§. 6. The Nobility and the Clergie are the prime pillars of a Monarchie, and the Communaltie is the ground whereon they ſtand. And this they well know that intend the ruine of it, for they will be ſure to ſtrike at theſe two props, knowing that then it will fall, and the ground and foundation remaine to them to erect a-new; (as *Ball* a Maſſe-Prieſt, Chaplain to *Wat Tyler*, adviſed his chieftane to deſtroy all the Clergie and Nobility; ſo *Garnet* did the Traytors in the powder-plot, (as the Earle of *Northampton* well obſerveth:) and therefore *Philip* the ſecond of *Spaine*, who was ſeldome in an errour about the vpholding or inlarging a Monarchie, adviſes his ſonne *Philip* the third, to ſtick faſt to the Clergie, *los Clerigos amigo*, as I haue beene; but yet ſo, as you diſregard not the Nobility, otherwiſe they will hate you, and envie them, and ruine all. Now if the Kings of *Spaine* haue reaſon ſo highly to favour their Clergie, as to feare, leaſt their kindneſſe

to them, ſhould kindle indignation in the Nobility; ſurely our Prince hath more reaſon ſo highly to ſuccour his Clergie, as that it may not be the object of the contempt of the vulgar. For the Clergie of *Spaine* and all the Romiſh faction are not ſimply ſubject to them, but deny Civill obedience alwayes to their Prince, where Canonicall obedience commands the contrary, or priviledges aboue it; when as our Clergie, are as true ſubjects as any State, & renounce all obedience to any other Potentate. So that this hearty adherence to his Majeſtie, is one reaſon, yea they beſtow all their labours in Gods ſervice, onely in dominions expect favour from none but his highneſſe; and they are more beneficiall to their King than any Clergie in Chriſtendome to his natiue Prince, or any State in this kingdome to the Crowne. For though the reuenues of other Clergies, as of *Spaine*, be infinitely aboue ours, as one of their Hiſtorians, *Opes Eccleſiaſticorum pene æquales ſunt ſecularium vnà cum Regis.* Yet they are not ſo conſtantly beneficiall to the King, but to the Pope: and if the King get any good ſum or ſubſidie out of them, it is either *la cruzada*, or tenths called *el excuſada*, granted to him by the Popes indulgence; or if he cannot procure a Bull of facultie, he muſt get all they giue by ſtriving and force (as Cardinall *de Oſſat* in his letter to *Henry* 4. of *France* ſpeakes of *Philip* the thirds ſacriledge.) *Rex Hiſpaniæ omnem argenteam ſupellectilem Eccleſiarum & Eccleſiaſticorum ſacrilega manu vſurpare tentat*: when as our Clergie, which haue not the tyth of the tenth part of that meanes is not only now and then profitable in ſmall matters. And if *Francis* 1. beleeved that for a great kindnes from Pope *Leo* the tenth, in their conference at the interview, to haue the tenths of Eccleſiaſticall livings in *France* for one yeare; as *Guicciardine* in a judicious ſleighting of the favour: *Promes ſe il Pontifice, al re dargli faculta, di riſcuotere, per vn anno la decima delle cheiſe, del*

Nicholaus Olrevie de regno Hiſpaniæ.

Oſſatus epiſt. 274.

Guicc. hiſt. lib. 12.

del Reame, de Francia that the King tooke the propoſall into conſideration, and communicated it to his Councell; who thought it a great benefit if he might haue them, *non ſecundum antiquum valorem beneficiorum*, but as they are improued; ſurely a farre greater benefit it is to haue the tenth every yeare: Subſides moſt yeares, and firſt fruites the firſt yeare, and that not according to the preſent value which is much fallen from the ancient reuenewes, but according to the Popes bookes, in moſt, when as Eccleſiaſticall preferments are abated halfe in halfe. So that as all other ſtates are more charged, ſo their reuenewes are improued accordingly; but the meanes of the Clergie is much impaired, and yet their charges increaſed in many things; in all things keepe the old rate, ſo that notwithſtanding the poverty (as S *Nicholas Bacon* at the Councell table) we haue no reaſon to exact or expect any ſubſidie from the ſpiritualtie, who are ſo exhauſted; yet it is conſtantly the moſt beneficiall ſtate of this Realme to the Crowne, both in ordinary and extraordinary reuenewes. In theſe two conſiderations amongſt many, wee ſee they deſerue much, and there is one thing that makes it more ſafe for our King to beſtow greater honour and priuiledges vpon them, then any other Prince; which is, becauſe he hath not the reaſon to ſuſpect them of ambitions aſpiring to a Monarchie, ſince they haue caſt off their Church Monarchies, as the *Romans* never ſuſpected any of a tyrannicall vſurpation, after they had by one conſent caſt out the Kings: ſo that though the Pope ſeeme to favour the Clergy vpon good reaſon, yet our King hath as much, and this reaſon more then the Pope hath, for he hath not onely all the power of *juriſdiction* the Pope had over them, but alſo the reuenewes alſo the Pope had from them: and yet is without feare and danger of being rebelled againſt by them, or diſ-throned. But in one thing it is more capable of a royall Potentates bounty and protection, then any

Concordata Gallia tit. de Annatis.

1. *Eliz.* 1.

forraine Clergie is, in reſpect of its owne Civill ſupreame head, or any ſtate in our owne Kingdome is of our King; and that is, that it is ſo poore and obvious to injuries, that it will make the ordinary bounty of a Prince magnificent, and make his power long, and delight to protect ſuch an innocent ſtate, being neither able to reſiſt, nor ſtrong to endure and ſuffer wrongs: thus from the power of Dominion paſſeth the influence of protection.

THE

THE THIRD CONCLVSION.

That all the rights and reſpects that the ſtate Eccleſiaſticall enjoyes or deſires are originally derived from their relation and dependance on the Civill.

HE that hath publique power and an opportunitie to doe a great good turne for endearing a private friend that depends vpon him, will haue much adoe to forbeare to doe it, though the weale publique ſuffer ſome detriment by it. Yet if his friend doe ſo much tender the publique good, that he will not deſire any thing to the prejudice of it; ſurely then the publique perſon out of his engagements and reſpects to the publique good, will leaue off his preſent purpoſe and pleaſure his favorite in ſome things that may doe him good, and the Common-wealth no harme. Even ſo our ſupreame Regent of great *Brittaine*, hath great and tranſcendent power, and never wants an opportunitie to doe good, & beſtow favours vpon the well deſerving ſtate of the Clergie; and it were impoſſible for him to hold his royall bountifull hand, if this Clergie ſhould not in all its petitions

petitions; conſider the publique good, apprehending it ſelfe as a member of the Civill ſtate. And hence it is, that though the King hath more power then I beleeue was ever tried, or can be defined, to doe his Clergie good, yet they haue not any thing conferred vpon them; which is not according to the lawes, cuſtomes, and liberties of this Common-wealth. All that the ſtate Eccleſiaſticall enjoyes, belongs to it as to a principall member of the body politique; and is derived to it from the ſupreame Civill head on which it doth depend, and in whom it is vnited to the Civill ſtate. It is no debaſing or derogation to a ſpiritualitie, to bee thus ſubject to the Dominion of a ſacred Soveraigne; for though ſervitude according to the Civilians proceed not from the law of nature, but of Nations, or at leſt from nature corrupted, (as the Schooles) yet orderly ſubjection and ſuperioritie proceed from the inſtinct of pure nature: for in Heaven there is order amongſt the bleſſed Angels, and in the ſtate of innocency there was ſuperiority, not onely betwixt man and all other creatures, but alſo betwixt man and woman; and had they lived in Paradiſe till there had beene father and ſonne, there ſhould haue beene *Patria poteſtas*, or elſe the fifth Commandement is not morall: and when there had beene many families, there muſt neceſſarily haue beene *Regia poteſtas*, or elſe the beſt and moſt happy life muſt haue beene without the greateſt happineſſe of life, which is order. Now the ſuperiority of our Prince over his Clergie is not an enſlaving tyranny, but a ſweet and a lawfull Soveraigntie, which government as it is due, ſo it is our duty to obey it; for government and obedience are relatiues of equall extent. And as it is no diſparagement to the ſtate Eccleſiaſticall to bee ſubject to our ſupreame Magiſtrate, ſo it is great benefit to the Clergie, and a ſatisfaction to the Laytie; that all the rights and reſpects that they enjoy or deſire, are deriued from that Prince whom both ſo willingly obey.

§ 2 All that the ſtate Eccleſiaſticall doth enjoy or claime, may bee reduced to theſe two heads; of power, and of honour: and they deriue theſe from one ſole ſupreame governour, who is fully qualified by his perſonall eminent authority, to transferre and conferre theſe rights and reſpects to them, and vpon them: for as theſe two the power and honour of the Clergie are inſeparablie derived from the ſupreame Soveraigne, then in being, and not communicable to any other ſtate: ſo the particular powers and regalities by which they are more eſpecially conveyed; are inſeparably and incommunicably appropriated to his royall perſon. As for inſtance, the power of the ſtate of the Clergie is originally derived from his Eccleſiaſticall ſupremacie, the honours from his lawes and royall prerogatiue. All Kings I confeſſe haue not Eccleſiaſticall government, and that becauſe many giue up their right; ſome know it not, as many of our Kings for many yeares were bereaved of it, in whole, or in ſome principall parts, by giving and granting to the Pope an inch in breadth with them, and he taking an ell in height aboue them. But when the firſt defender of the faith *Henry* the eighth was weary of the weight of that intollerable vſurpation, eſpecially when he perceiued that the Popes ambition ſoared vpon the wings and winde of the ſpirituall ſupremacie, to a temporall ſuperioritie; The King like *Iulius Cæſar*, that he might fully recover into his power the temporalitie, *poteſtatem Pontificiam, cum Cæſaria potentia coniunxit*: hee reſumed the Eccleſiaſticall power, finding that it was impoſſible in the courſe of the moderne policie of the Popes, to bee ſupreame agent in temporall affaires, while they were the higheſt in ſpirituall government; eſpecially ſince theſe powers cannot reſt really divided in a Monarchie, though they bee really diſtinct in a Monarch being a mixt perſon. So that the ſtatutes in the *viceſimo quintò* of *Henry* the eighth, and

Iacob. Cujacii de origine Civile. §. 9.

primo of *Elizabeth*, which determinately ſet downe this power of ſupremacy, are not lawes inductory of a new, but declaratorie of the ancient authoritie of our Prince, with the ſolemne ſignification of their reaſ-ſumption. And our ſacred Soveraigne doth not alone take this power for his right, but many other Potentates in Chriſtendome that haue not ſo much reaſon: As the Kings of *France*, *Spaine*, *Denmarke*, *Poland*, *Hungarie*, and *Sicily*: which three laſt ſtates haue more nearer dependance upon the Pope then any in *Europe*; for *Sicily* hath beene held of him as a ſpirituall feud, as *Poland* and *Hungarie* were both in one Popes dayes. *Benedict* the ſeaventh converted from Paganiſme, and one would thinke, and ſo it ſeemes wholly at the Popes diſpoſall, eſpecially in ſpirituall affaires. Yet in *Sicily* the Kings of *Spaine* doe not onely claime ſupremacie of over-ſeeing, but alſo ſuperintendencie in doing in Eccleſiaſticall employments; and the Kings of *Poland*, whoſe power is moderated by the limits and conditions of an election; *Archiepiſcopos, Epiſcopos cœnobiarchas dicunt, ſuoque arbitrio eligunt*: and the Kings of *Hungarie* doe vſe the ſame power, and with as much reaſon (in a Canoniſts opinion) as we doe, for though they cannot *de iure*, yet, *Reges Angliæ & Hungariæ conſerunt beneficia & privilegia Papæ*. The Kings of *France* haue alwayes beene at defiance with the Pope for this power, renewing continually pragmaticall ſanctions in defence of it, eſpecially in the time of *Charles* the ſeaventh, therefore called *Carolina ſanctio*: which was of that force by vertue of that approbation of the free Councell of *Baſile*, that it curbed and caſheered the Popes power, cauſing them to impeach it by appealing from it almoſt in all cauſes; which *Pius* the ſecond perceiving, ſollicited *Lewis* the eleventh the ſonne of *Charles*, to aboliſh and repeale that ſanction, being enacted in a ſeditious ſchiſmaticall conventicle, which he well approved for a generall Councell

Theſaurus Polit. Apoteleſ. 50.
Guicciardino hiſt. lib. 4.
Herbert. hiſtor. Poloniæ lib. 2. cap. 7.
Baron. Anal. Anno 1209.
Thuanus hiſt. lib. 56.
Guymer. Comment. prag. ſanct. tit. de Innatis.
Duarenus pro libertate Eccleſ. Gallicana. § 4.
Concordat. Galliæ Leonina Conſtit.

cell when hee was a private Æneus *Sylvius*, Secretarie to *Fredericke* the third. The King for the preſent called it in, but his wiſdome preſently found the miſchiefe, and rewarded Cardinall *Balve* very well for vrging him to it; as the Popes Legat, *Rex Cardinalem Balvam in carcerem detruſit ob detrimentum, conſilio ſuo emergens*; and with ſo much diſpleaſure, that *Philip de Comynes* ſaith, *Cardinalis Balvenſis carcerem horrendum excogitavit in quem ingreſſus primùm erat & quatuordecem annos detentus, non obſtante Pontifice Romano.* The Kings of *France* were ever after ſtout in the defence of that ſanction, till *Francis* the firſt; in his interview with *Leo* the tenth, did remit the force of it in the *Concordata Galliæ*; which made his ſerious Secretarie *Budæus* ſay, *Palladium Galliæ proditam eſſe.* The Kings of *Spaine* in *Caſteile* haue ſome limited ſpirituall power, by a late priviledge of *Adrian* the ſixth, granted to *Charles* the fifth; but when they ſee their time, they take ſo much as ſhall ſerue their turne; as *Philip* the ſecond ſeiſed vpon the temporalls of the Archbiſhoprick of *Tolledo*, (the Biſhop *Caranza* being apprehended for ſuſpicion of new hereſie) and when *Sixtus Quintus* ſent to him to vndertake a warre againſt *England*, and told him that he would remit to him all the reuenewes that aroſe of that Biſhopricke, *ſede vacante prudentiſſimus princeps reſpondet ſe nil de ſuo Pontifici largiri*: & though at home his power is but what hee pleaſes to take, yet in other of his territories it is lawfully as large as another Princes; as in *Burgundy* and *Belgia* he hath the ſame right the King of *France* once had, as *Charles* the fifth made a ſtatute of *Mortmanie*. *Nullis perſonis Eccleſiaſticis, vel locis ſacris licet vllam rem immobilem, abſque principis licentia acceptare, vel habere.* And *Philip* the ſecond his ſonne publiſhing the Councell of *Trent* in the Low-Countries, did not let it paſſe in all points with the full ſtrength of an Eccleſiaſticall law, but reſtrained it with an expreſſe clauſe of ſpeciall

Proteſtatio Regis ad verſ. Concil. Trident. apud Thuan. hiſtor. lib. 8.
Philip. de Com. lib. 9.
Concilio Piſano.
Guicciardino hiſt. lib. 12.
Budæus de aſſe. lib. 5.
Marinæus ſicul. della Eſpanga.
Thuanus hiſt. lib. 71.
Theſaurus Polit. Apoteleſ. 49.

ciall priviſion, that it ſhould in no wiſe prejudice or diminiſh any priviledge the King enjoyed touching poſſeſſary judgements or Eccleſiaſticall livings, or concerning nomination therevnto. But I will not now enquire whether our Prince hath ſuch a ſupreame power *iure poſitivo Pontificio*; I am ſure it is *iure divino Apoſtolico*: and ſuppoſing ſuch a power, I will for more diſtinct proceeding, conſider the ſeverall ſtreames and ſtrings of this Eccleſiaſticall power; and how they flow and are faſtned to the head and top of Soveraigntie, paralleling them in the ſeverall parts and points of this honour, diſcovering how they are annexed to theſe powers, and how they ariſe, are raiſed and ſtand by his Maieſties lawes and Regall prerogatiue.

Boter. Heroic. quaſt. lib. 1.

§ 5 All power Eccleſiaſticall is either power of order, or of juriſdiction, and both theſe depend vpon the power of ſupremacie. For though theſe powers of order and juriſdiction be immediately derived from Chriſt the miſticall head of the Church, in reſpect of their inſtitution, commiſſion, internall qualification, and deputation to perſons to performe them; yet they are mediately derived from our Prince, the miniſteriall head of our particular Church, in relation to their execution. For the power of order cannot bee lawfully exerciſed in theſe dominions, without the licence and permiſſion from the power of juriſdiction; which power is originally derived from the Kings dominion, over Eccleſiaſticall cauſes and perſons. So that it is plaine in generall, that they are dependant on his Crowne and ſupremacie: To omit the juriſdiction *in foro conſcientiæ*, that depends vpon the power of order, I will for a more particular view of this dependent derivation, conſider the ſeverall proper acts and workes of this Eccleſiaſticall ſupremacie, which (as I conceiue) may be reduced to theſe foure. The firſt worke is reformation of the Church in Doctrine,

Durandus de origine jure Civ. concluſ. 2.

1. Eliz. cap. 1.

ctrine, manners, and ceremonies. The ſecond is convocations of Councels and Synods, for the reformation. The third is promulgation of the lawes and edicts, proceeding either from his Highnes pleaſure in publick declarations, or the Canons & conſtitutions decreed or confirmed in his Councels. The 4th is, in receiving of appeales, & giving definite, determinate deciſions, reſtitutions, and deprivations belonging to cauſes & perſons Eccleſiaſticall. Now all theſe acts haue their effects in the power of juriſdiction; for the reforming power of it, is ordinarily & perpetually derived to Archbiſhops & B. *de iure*, to Arch-deacons and Deanes, *de conſuetudine*, to be executed by them in their Provinciall, Trienniall, and Annuall viſitations: but it is principally reſtrained to the correction of manners. This power is extraordinarily *ad tempus* granted to the Church repreſentatiue in Convocation. It is not turned into a running regencie, rolling round to every particular Preſbyter, though it be not an ordinarie ſtanding court, the calling of which is the ſecond worke of ſupremacie. To this Convocation thus called, there is given power and licence, to deliberate of, to order, and doe all ſuch things as ſhall concerne the ſetled continuance of the doctrine and diſcipline of the Church of *England*, obtaining his Majeſties royall conſent in the proceeding and determinations (as it is plaine in his Highneſſe declaration.) And the lawes they make, take their firſt force from the worke of his promulgation. But before I proceed any farther, I muſt of neceſſity take a little time (though to ſome it may ſeeme an impertinent parentheſis) rejoycingly to conſider the gratious countenance, our pious Prince ſo freely ſhewes to this diſcountenanced, diſabled houſe of Convocation. Little did any thinke, (no not that able abſolute States-man, the laſt Lord-Chancellour, though wiſhed it) that his Majeſtie could haue beene ſo fully and faithfully informed of the ancient power and priviledges

of it, as to thinke of reſtoring them, ſeeing not onely in the opinion of the people, but alſo in the practice of the lower houſe of Parliament it hath beene long diſmembred from that high Court, and loſt all the power and priviledges as eſcheated to the ſame, inſomuch, that it is queſtioned by ſome, whether ever it was a member of the Parliament or no. But it ſeemes his Majeſtie did ſoone apprehend it to be an eſſentiall part of it, and vpon a ſhort ſearch diſcovered, that though heretofore it was a member, whoſe nerues were wreſted, diſtorted, diſtracted and racked from its naturall head, by extention to a forraine: yet there was no *diſſolutio continui* (as the Phyſitians ſpeake) from the head, and therefore not from the collaterall members; and ſeeing it was but a diſcontented diſcontinuance that did cauſe it to be ſuſpected and ſuſpended, it being now againe contracted and knit moſt firmely to the head, is vnited as cloſely to the members, & may ſafely exerciſe and enjoy all the power and priviledges that did of right belong vnto it, with the Parliament; for though it was no reaſon, that it ſhould haue the priviledges of the Parliament, when it was diſtracted from it, and aſſembled without it by vertue of the Popes Legates writ, and ſo the power and purpoſe of it was forraine, and juſtly came within the compaſſe of a *Præmunire*, for the Clergie then was no true member of the common-wealth, and ſo the Convocation cut off from the Parliament; yet when as it is now aſſembled with it by the ſame writ of the King, and the Parliament is not compleate without it, being one of the three Orders, and that State which makes it haue competent power in matters Eccleſiaſticall, that it is not a meere temporall Court, and that in the judgement of thoſe that had leaſt reaſon ſo to eſteeme it; for wee finde 1. *Philip. & Mariæ, c.* 8. That the Legate of *Iulius* the third tooke great care to haue Statutes repealed, made againſt the Popes ſupremacie,

1 *Phil. & Mar. c.* 8.

cie, wherein hee granted them to be authentically made, and consequently, that they had Ecclesiasticall power to enact them, otherwise by reason of nullitie, they had been cancelled and abrogated in themselues. And *Antonius de Florebellis*, an *Italian* Prelate in his *Panegyrick*, *de restituta religione in Anglia* saith, it is done *honorifico vniversi Anglorum consilii decreto*, in which speech, he supposed their power to decree it, which he would not haue done, if hee had held it to be a meere temporall Court; and he must necessarily haue so accounted it, if hee did not reckon the vpper and lower Convocation Houses, as members of it, exercising equall power with equivalent priviledges. As it was plaine in a particular example in that Parliament; for when Arch-deacon *Philpot* was questioned for some words that passed from him in the Convocation House, hee pleaded, that hee was priviledged to speake them, since the Convocation was a member of the Parliament; and this plea was not refused, but neglected. For they were not ignorant what was enacted by *Henry* the sixth, to wit, that all the Clergie, which be called to the Convocation by the Kings writ, shall fully vse and enjoy all such liberties, as the great men, and Commons of the Realme haue, that are called to the Parliament. And as they had some priviledge, so it is plaine by a Statute *vicesimo quarto* of *Henry* the eight, (though now abrogated) that they had once as much power in their receiving appeales from inferiour Courts Ecclesiasticall, when it was a *Præmunire* to appeale to *Rome*, or else-where. The words of the Statute, printed in the yeare 1550, are: The partie grieved, may appeale to the spirituall Prelates, Abbots, Priors, and Proctors, convocate by the Kings writ, in Convocation. So that the restitution of the Convocation, was a worthy consideration in his Majestie, seeing it is as neerly and deerely annexed to his supremacie, as the Parliament is: for his Majestie

Florebellis Orat. ad Phil. & Mariam.

Fox Act. mon. pag. 1632.

8 Hen. 6. c. 1.

24. Hen. 8.

Majeſtie having two capacities of government in him, the one ſpirituall, the other temporall, by both theſe hee hath ſupremacie, and this ſupremacie is chiefly exerciſed in the calling, preſedencie, and diſſolving of the great aſſembly of the three States, which high Court is not competently correſpondent to both thoſe powers in the King, vnleſſe the Parliament conſiſt collectiue of ſpirituall and temporall perſons, which it hath anciently (if the Booke *De modo tenendi Parliamenti* be authenticall) for hee makes the vpper Houſe conſiſt of three States, the Kings Majeſtie, the Lords ſpirituall and temporall; and lower of the Knights, Procurators for the Clergie, and the Burgeſſes; which both anſwer the Kings mixt ſupremacie. So that as he is *ſupremus Iuſtitiarius totius Angliæ*, in relation to the temporalitie; ſo he is *ſupremus*, or (as *Conſtantine* truely entitled himſelfe in the Councell of *Nice*) ἐπίσκοπος τῶν ἐπισκόπων, in reſpect of the ſpiritualty.

Ridleys view of Eccleſiaſticall Lawes.

Euſebius in vita. lib. 3.

But to returne to my preſent promiſe, and purpoſe, which was to ſhew how the actes of ſupremacie haue their effects in the Eccleſiaſticall juriſdiction, derived to the Clergie: And I am now to ſhew, what effect the power of promulgation of lawes hath, which is in conſenting, confirming, and publiſhing the Eccleſiaſticall Lawes which are agreed vpon in Convocation (not excluding the advice of the Parliament, becauſe the State Eccleſiaſticall is not an independant ſocietie, but a member of the whole:) hence it is, that they are called the Kings Eccleſiaſticall Lawes, by which the Clergie is ruled in ſpirituall cauſes, according to which they exerciſe their juriſdiction *in foro exteriori & contentioſo*; hence it is, that for this laſt age, the Eccleſiaſticall Lawes of this Realme haue ſo well agreed with the Civill, becauſe they paſſe not without the aſſent of the ſupreame governour. And it were much to be deſired, that Chriſtian Princes would not onely permit lawes to be made, and giue force to them

them by their authority, but alſo that they would vouchſafe their perſonall preſence, to be Preſidents in all aſſemblies for that end, for then they would proceed and conclude to better purpoſe. As *Iſidorus Peluſiota* writes to the Emperour *Theodoſius* the younger, to be reſident and preſident in the Councell of *Epheſus*: εἰ μὲν οὖτος λαμβάνῃ χρείᾳ, παρεῖναι τοῖς κεκλημένοις ἐν Ἐφέσῳ: which is, that if hee would be pleaſed to take ſo much time, as to be preſent there, he did not feare, that any thing that ſhould paſſe, could be faultie; but if he leaue it all to be done by turbulent ſuffrages, τίς τὴν Σύνοδον σκωμμάτων ἐξαιρήσεται; Who can free that Synod from ſcornfull ſcoffings? his counſell was ſafe and ſeaſonable, becauſe the cauſe of feare was very probable and eminent. For in a Councell, where there is a Monarchicall authority, a ſupreame power in one, there will be more diſpatch in deliberations, more expedition in executions, than where multitudes of equals ſit alone, for they will be many of them over-wiſe, and moſt over-wilfull to agree in one poynt; when as every ſingular perſon will broach his particular project, and propoſe it as a publick law, with reſolution to be a recuſant to all their lawes, if they will not be Proteſtants to his: and ſo it comes to paſſe too often, that they are forced to yeeld to one another, or elſe no law ſhould paſſe. Hence is that multiplicitie, vncertainty, confuſion & contrariety of lawes in ſome diſeaſed States, than which nothing diſcovers a State to be more deſperately declining, though they are good in their particulars; for they ſhew the multiplication of ill manners, which *per accidens* begot them, and they are likely to make them worſe, becauſe they being appointed to amend them, are diſappointed and diſabled by their owne croſſe contrarieties. As in a naturall body, over-growne and over-flowne with ill humours. If a Philoſopher that conſiders onely a body neither ſick nor well, giues that which is good. ἐν παῖσι γυμνασικοῖσιν

Iſidorus Peluſ. lib. 1. epiſt. 311.

σπουδὴν ἐυεξίαν, (as *Hippocrates* calls it) and when he hath done an Emperick come that conſiders it as ſick, but he knowes not of what, nor the temper of the conſtitution, but boldly and blindly giues one medicine to all, for all diſeaſes, and at laſt the judicious Phyſitian come and conſider it as it is, and know what to doe, hee muſt firſt vndoe all the other haue done, before hee dare adminiſter that which ſhould firſt haue beene taken, and by this time, the body is either paſt cure, or deſperate concluſions muſt be tried to recover it. Therefore happy is our State Eccleſiaſticall, in whoſe Convocation our ſupream Soveraign is Preſident, ſo that the Lawes paſſing with his royall conſent, are certaine, and eaſie to be obeyed, by reaſon of their rareneſſe and paucitie, which makes them pertinent, diſtinct, and free from confuſion. And therefore I doe not a little marveile at learned *Baronius*, that ſince hee doth not deny *Iuſtinianus* the Emperour the power of making Eccleſiaſticall Lawes, he ſhould ſo ſcrupulouſly and buſily inquire, what ſhould moue him to meddle with the making of them; when as I doe not doubt, but the Clergie then might requeſt him to it. This laſt act of ſupremacie, is to receiue appeales, and giue determinate deciſions, and this hath its effect, and is exerciſed in the Eccleſiaſticall Courts. And they doe not exerciſe any power, that is not derived from this ſupremacie, either immediately or mediately. So that as the lawes they execute, are the Kings Eccleſiaſticall Lawes, ſo theſe Courts are the Kings, and all the proceſſes and courſes approved by his Majeſties Lawes. Therefore now there is no ground for a *præmunire* in them, though the words of the Statute runne (*to Rome or elſe-where*) for by (elſe-where) ſeemes to be meant, the *Romiſh* power, or Court, which was not then at *Rome*, becauſe the Popes ſeat was then at *Avignion* in *France*, and not our Biſhops conſiſtorie: For I beleeue, that Statute was made

Baronius Annal. Anno. 528.

Babylonem Gallicam, vt Petrarch. epiſt. 123.

made to free them as well from the forraine vſurpation, as any other of the King Courts, as the pragmaticall ſanction of *France* doth, which was of the nature, and in imitation of it about the ſame time, by *Charles* the ſeventh, brother-in-law to *Edward* the third. But however it was then meant, I am ſure it cannot extend to them now, vnleſſe wee will deny the Kings ſupremacie over all cauſes and perſons Eccleſiaſticall; and then they are not the Kings Courts; but if we grant the Kings ſupremacie, wee muſt deny that any of his Courts can incurre a *præmunire*. A prohibition, I grant, may lawfully lye there, becauſe it is ſafe for the whole State, that every juriſdiction ſhould haue its bounds, and keep, or be kept in them. But yet I will not ſay ſo in generall, but we muſt admit them with diſtinction of prohibitions, one of Law, another of Fact. Now that prohibition which is of Law, according to the expreſſe words of the Statute, (which are commonly large enough) is the prohibition that is lawfull, as for a prohibition of fact, which is by a ſophiſticall ſuggeſtion ſucked and ſqueezed out of the copie of the libell, without judgment of the Kings Courts vpon it, in my opinion is not right, and is many times the cauſe of wrong, either in vnjuſtice or delayes; yea and in abuſing of the Statute with the Kings Courts. For the prohibition of law, the moſt I conceiue it inferres is, to make all the proceedings voide, *Coram non Iudice*. But if I might know, what degree and quality of offence it is, for a Court temporall to hold plea of a meere Eccleſiaſticall cauſe, I ſhould more eaſily apprehend the ſcandalous nature of the ground of a prohibition, which it may be, is the ſame with a writ of errour in the temporall Court; ſince that a conſultation doth not enſue vpon that, but after a prohibition grounded vpon a ſuggeſtion. So then, all the proceedings of theſe Courts, haue their power from this laſt act of ſupremacie, as well in primatiue pro-

ceſſes of inquiſition, as in punitiue proceſſes of execution. As this authentick authoritie is moſt ſeene in the proceedings *ex officio*, which are not onely, nor alwayes by oath, (as many are miſtaken.) Theſe are by immediate commiſſion, where an Eccleſiaſticall cauſe is criminall, and proſecuted as criminall: And ſo alſo the vtmoſt punitiue proceſſe Eccleſiaſticall, which is a writ *de Excommunicato capiendo*, is evidently derived from the Kings power, and iſſueth immediately from his favour to the Church, that it may be more eaſily obeyed, and is divers and variable in ſundry governments, and executed by temporall power, being nothing of the nature of the ſpirituall excommunication, but an acceſſion *conceſſa permiſſione ex devotione Principum* (as *Iohannes de Pariſiis* ſaith againſt *Boniface* the eight.) As for the judgements of Biſhops conſiſtories, as they are derived from the power and law of Chriſt the great Biſhop: ſo they are like the judges of them, who are rather arbiters *& amicabiles compoſitores* (as *Panormitane*) then Iudges, ruling by the auſterity of authority, ſo that poore defendants may flie to them, as to their altars, who are Miniſters of the altar: and in this ſenſe, that which *Architas* ſpeakes is moſt true, *Idem eſſe arbitrum & Aram*. And though they haue no forcing power, but from the King, and no power of any force againſt the King; yet the greateſt and beſt Kings haue yeelded to them in their advice, not as Prelates, but as they are Fathers in God, (as *Alexander* the great ſaid to his father King *Philip*) farre vnlike the Biſhops of *Rome*, who will rule the higheſt Princes, and yet profeſſe themſelues ſervants of ſervants; which makes mee call to minde, the obſervation of the wiſeſt King *Salomon*, that one of the chiefeſt inſtruments whereby the earth is ſhaken, is, a ſervant that rules over Princes. And as they vſurpe rule, ſo they vſurpe the ſword

Iohan. de pariſ. de Poteſtate Reg. Concl. 1.

Ariſt. Rhet. lib. 3. c. 11.

Dion. Chryſoſt. περὶ Βασιλείας β.

Proverb. 30.

ſword of temporall Princes, and carry it in the ſpirituall ſcabbard; and drawing it, doe more hurt in their paſſion, then they can help by their priviledge; when as they found it ſoberly and orderly put up by S^t *Peter* when Chriſt was at his elbow to heale the greateſt wound that hee could make. Thus is it ſomewhat plaine, how Eccleſiaſticall power is derived from the King, as hee is ſupreame head in lawfull and full authority over all cauſes and perſons; which double power in my conceit, the cuſtome of the ancient *Perſians* at the death of their Monarch doth fully and fitly expreſſe, for the lawes are ſilent: ὅτε ὁ νομὸς ὅποτε βασιλεὺς ἀποθάνη, yea and their ἀθάνατον πῦρ their holy eternall fire which every one worſhiped in his private houſe as his houſhold god, was put out when the Emperour died. *Briſſonius de Regno Pontificio lib. 1.*

§ 4 The next thing which I promiſed to declare, was how the honour of the ſtate Eccleſiaſticall is annexed to the power by the Kings lawes and royall prorogatiue. The honour of the Clergy is contained in revenewes and priviledges, which are vnited to their powers of order and juriſdiction; which powers although we ſhould grant that ſimply conſidered in themſelues, they are not diſtinguiſhed *jure divino*; yet I am ſure none will deny that they are diſtinct, *quoad extenſionem, permiſſione & approbatione divinâ*, as *Iohannes de Pariſiis* doth diſtinguiſh the power given the Apoſtles into ſix parts, in reſpect of ſo many ſeverall acts of execution, the fift of which is *poteſtas diſpoſitionis miniſtrorum, ſecundum quoſdam quoad determinationem juriſdictionis Eccleſiaſticæ ut vitetur confuſio.* And as they are thus diſtinct according to the execution, and ſtand ſo confirmed by the poſitiue lawes of the land; ſo they haue diſtinct portions and priviledges according to the ſame lawes: yet after a different manner, eſpecially in reſpect of the portion. For the power of order which hath maintenance of diverſe kindes, as tithes, Κτήματα δεῖται τιμῆς σημεῖον ἐστι *Ariſt. Rhet. lib. 1. cap. 5.* *Ioh. de Pariſijs. cap. 12.*

tithes, oblations, Gleabland and mortuaries holds them all according to the lawes of this land, as due to the Clergie, for executing the power of order, but by different acts of these lawes; as Mortuaries are permitted, and Gleablands granted, Tithes and Oblations confirmed, and all constrained to be paid. Now tithes that are onely confirmed by the Kings positiue lawes, are supposed to bee due by some other law of higher nature then the Kings, which is not any forraine law, as *Ius Ecclesiasticum* (as *Bellarmine* calls the Cannon law) it must bee then by law divine; or immediately arising from supernaturall and morall considerations, which law we grant to be positiue; yet not meerely humaine, nor changeable in respect to us: and they must necessarily runne into many grosse errours, that take onely such lawes for positiue as are invented by men; and thence conclude them mutable. And therefore I presume that the learned *Selden* doth so vnderstand the positiue law, by which hee holds tithes to be due, not in opposition to divine and morall; but as specially diverse from it (as it partly appeares in the whole drift of his history) where I doe not beleeue that any can finde that hee ever delivers his judgement, denying them to bee *jure divino*: so that in my apprehension, and I hope not against his intention, he may doe the Church much good in his relating what wrongs the Clergy in all ages haue sustained. For his history is onely *de facto*, what hath beene done; hee giues not his judgement *de iure* what ought to haue beene done, which if he had, he would assuredly haue pronounced for them; and this I am forced to beleeue, when I consider his exact generall knowledge, and the reverent respect he beares to authentique antiquitie. I doe not in this confesse that they are not *iure divino*, because I affirme not them to be due by the law of *Moses*, that is no direct consequence vpon my proposition; for not onely the judiciall law which was the comment, and

Bellar. de Cler. lib. 1. cap. 10.

Hooker Eccles. Polit. l. 1. §. 15.

I beleeue in moſt points is ſtill the counſaile of the moſt wiſe God (eſpecially in this particular where the ground of the command is morall) doth proportion a tenth part as neceſſary then to be paid; and though the ſame neceſſity binds vs not now, yet the correſpondencie of the conveniencie (as I conceiue) doth hold vs as ſtrongly to it as it did that ſtate. For I ſee no inconvenience in tithes-paying in our ſtate more then in theirs, but onely they were brought home vnto Prieſts (which onely exception M^r *Cartwright* makes againſt tithes:) But I ſtand not onely vpon this, but I am alſo partly perſwaded, that they were confirmed by Apoſtolicall approbation, though it bee not in expreſſe words ſo ſet downe. For though the Apoſtles did all preach the Goſpell, yet they did not all write, neither did thoſe that did write commit all to writing which they did teach: for S^t *Paul* adviſeth the *Theſſalonians* to keepe the traditions they had beene taught either by word or epiſtle. And therefore it is freely acknowledged by a famous Orthodox divine of our owne, *non omnia eſſe ſcripta in libris veteris & novi Teſtamenti, quæ Apoſtoli aut docuerunt aut fecerunt; ſed fatemur Apoſtolos ritus & conſuetudines ſanxiſſe, non autem ſcripſiſſe*; hence it is probable, that they might by conſent confirme them, becauſe it was not onely a cuſtome and a law then in force, and they did not delight to innovate, but vpon neceſſitie: but alſo becauſe we doe not finde one word of their abrogation or alteration. Yea it ſeemes to mee that the author of the Epiſtle to the *Hebrewes* entitles the Miniſters of the Goſpell to them by a more particular right, (as Biſhop *Andrewes* calls it) *jure Benedictionis*, for it is not onely ſaid that *Abraham* paid *Melchizedeck* tithes as hee was the higheſt Prieſt, but that hee received them and bleſſed him; which implyes bleſſing to be the duty he performed for them. And whatſoever wee hold of theſe tithes, I aſſure my ſelfe the Primitiue Church did ſo conclude, otherwiſe

Annot. in Rhem. Teſt. 7. Heb.

2 Theſ. 2. 15.

Whittaker. cont. Bellar. quæſt. 6. cap. 6.

Heb. 7.

Benedixit non tantùm vt priuatus ex deuotione, ſed vt ſuperior ex auctoritate.

wise they would not with such a generall consent haue bound themselues to that meanes and portion of maintenance. I speake of the Church *in statu pacato*, it was otherwise with them I confesse *in statu perturbato*, in persecution; but not out of good choise, but hard chance: For obserue but from the first generall Councell of *Nice*, (not to reckon vpon Provincall Synods, because they doe not bind our state but onely in point of doctrine and example) peruse them till the last of the *Lateraine*, and you shall finde they are plaine and peremptory. And not onely in the acts which in some Councells are erroneous, (as in the second Councell of *Nice*) being the seaventh generall, there is a Cannon very particularly passed with a generall consent; so in the Councell of *Lateraine* vnder *Innocent* the third, where it is particularly set downe, that the English Ambassadors were present. There is a Canon that runs thus, *Statuimus quòd solutio decimarum præcedat exactionem tributorum*. We haue nationall Councells also as at most Coronations of the Kings before the conquest, and also immediately vpon the conquest; and many generall Charters wherein tithes haue beene confirmed to the Clergy, and that with solemne vowes and imprecations, which dedication to God, if there be no other divine right, puts the detainers of them into *Ananias* and *Saphira's* case; because that though while it was wholy with them, it was their owne; yet when it was thus seperated by their solemne vowes, then sanctified by the solemne act of Bishops; not onely ratifying the Founders vow, but consecrating them with the Church to divine vses, the nature, property, with the propriety was changed. So that I will conclude from these premises, that the positiue law by which tithes are due to the Clergie, is not meerely humane but mixt and preternaturall, because it binds men as they are members of the supernaturall society of the Church visible: and because they haue bound

Balsomon concil. Nicen. secundo can. 12. Concil. Later. 4. can. 54.

Acts 5.

bound themſelues by it in diuine conſiderations. But yet they are enjoyed by the confirmation and conſtraining power of the Kings lawes: And were it not for the lawes, as they are an vndoubted due, ſo they would be a perpetuall debt with many; and that out of ſeuerall grounds: ſome deſiring to haue ſtipends in ſtead of tithes, doe too willingly remit them for a ſufficient ſtipend though it bee vncertaine, eſpecially to their ſucceſſors. But I hope this ground will never be generall, as long as this Kingdome is a Monarchie, for if it is a miſerie of free Cities and Democracies, ἐν δὲ ταῖς δημοκρατίαις μηδὲν ἐκκλησιάζειν --- yet I muſt needs confeſſe that at the firſt originall of Vicarages they had but ſtipends, but it was vnjuſt; *Vicarii ſtipendio ſunt contenti*, which was but a permitting prouinciall conſtitution. Another meanes whereby the due payment of tithes is impeached, is, the cuſtomes of many places: which are lawfull and laudable with theſe conditions; if they were not the inventions of men, but begotten by time, and if they be as reaſonable as ancient; *nam debent eſſe tàm neceſſaria continuatione quam recta in ortu*: and where the law is defectiue, for cuſtomes againſt law are voyd by the Ciuill law, if they bee not expreſly confirmed by the ſupreame power. With theſe conditions let cuſtomes be enjoyed. But the next pretenſe is preſcription againſt tithes once paid, and that we may admit with his limitations; as that it extend not to thoſe things that cannot be alienate, that are annexed to the Crowne, or if it ſtand not *contra ſtatutum poſtea editum*, and be granted vpon a good cuſtome, and the perſon qualified, to poſſeſſe the thing claimed; for lawfull preſcription cannot proceed without as lawfull poſſeſſion. The want of theſe lawfull limitations made the Councell of *Laterane* vnder *Alexander* the third, condemne and controule the grand preſcription of *Clyentary* tithes continued from *Charles Martellus*. The taking away of which ſhirking ſhifts made many deuiſe

Ariſt. polit. lib. 4. cap. 13.

Linwood de officio Vicarij paroch.

Cujacius in corpus Vlpian. tit 10.

L. Sacratiſſima Q. de leg.

Dier. report. fol. 313.

Duarenus de benef. l. 6. c. 1.

viſe another, which priviledge is either of ſocieties or perſons, granting immunities from payment of tithes, which pretenſe of all others (as far as I vnderſtand) cannot bee made good by the moſt favourable forced interpretation that may be; for they are void and nullified according to all the reſtraining Proviſoes that bound a priviledge. For they were granted againſt the law of God and nature, not onely beſides it; there are ſome revoked by the ſame power that granted them, as *Innocent* the third in the fourth Councell of *Laterane*. And in this particular Kingdome *Henry* the fourth made many ſtatutes to reſtraine thoſe priviledges granted to the Friers, eſpecially providing that none ſhould haue any *de novo*; but that which proues them void in this Kingdome, is, that not onely the particular perſons, but alſo their whole ſocieties are diſſolved and diſtroyed; and ſo they are expired and extinguiſhed with them: *Deſtructo Collegio pereunt privilegia*, eſpecially when their revenewes are confiſcate, *& non privilegiatus præſcriptione, non ſuccedat privilegiato*. But when other meanes began to be reſtrained, they procured appropriations and annexions of benefices preſentatiue, not onely in point of patronage, but alſo they tooke the whole due without diſcharging any of the duty; which laſt and worſt pretenſe I will not deny but the wit of man may make it plauſible, yet I am ſure it will never bee pleaſing to the will of God. Monkes and Friars were the authors of theſe immunities and appropriations, (to omit cuſtomes and preſcriptions, becauſe they doe not ſo much wrong, and haue more ground of right:) I doe not accuſe the Monkes who lived in the firſt fiue hundred yeares after Chriſt, who lived holy, and laboured in their callings, and had no ſuch priviledges: Neither doe I condemne *Benedict* who was the father and firſt founder of all that profeſſed a regular life in a ſequeſtred cloyſter in the Weſtern Church. For he had good reaſon

4. *Hen.* 4. *c.* 7.

Bartolus in D. Q. Sodales. tit. 24.

Idem ibidem.

Hoſpinianus de origine Monachat.

reaſon ſo to doe, conſidering the tumults and many broiles that fell out vnder the government of *Iuſtinian*, & by reaſon of the continuall incurſions of the barbarous nations into *Italy*. But when he was thus ſhut vp, many reſorted vnto him, admiring his devotion; at laſt they tooke rules from him, and grew into a fraternitie of the Benedictines: and from them ſprang many other orders; who living a life far different from other men, bred great wonderment in all, and that admiration procured adoration of their profeſſion, & made thoſe that were able beſtow great revenewes vpon them: Yea they did ſo dote vpon them, that after a while they endowed them, if not with the greateſt, yet I am ſure the beſt and fatteſt part of their Conntryes; inſomuch that moſt of the moſt pious Princes of Chriſtendome were forced to make a ſtatute of Mortmaine, (like *Moſes*, who made the firſt ſtatute of Mortmaine) for theſe revenewes which they poſſeſſed were in a dead hand, that did no good to the Common-wealth. Whence we may obſerue that this ſtatute was rather for the benefit of the Common-wealth, then made out of the diſlike of the Church meanes; eſpecially ſince theſe Friers were not of the Clergie, but meere Lay-men; and the Clergy had as much reaſon to deſire a law for Amortization as the Common-wealth, becauſe as they had conferred lands and goods vpon them, (for not onely Princes, but Popes were taken with admiration of them) ſo they were alſo more charged with the publique, and had leſſe meanes. And this ſtatute gaue the occaſion to them to procure priviledges and immunities from payment of tithes. For though at firſt for a time they came to their Pariſh Churches, yet when they procured to haue Churches or Chappels of eaſe for their fraternities; then they obtained vnder *Alexander* the third in the *Laterane* Councell, when hee condemned preſcription, to be confirmed priviledged from payment of tithes of thoſe lands which they tilled

Exod. 32.

Duareus de benef. lib. 2. cap. 1.

themſelues; when as *Adrian* the fourth our country-man, his immediate predeceſſor had revoked or reſtrained the immunities granted to them by *Paſchall* the ſecond. But when *Innocent* the third, who loved to bee doing and vndoing, reſtrained the grant of *Alexander* the third, which they perceived did much prejudice their plentifull profit, they procured diſpenſations from the Pope to haue parſonages appropriate to their houſes in more great abundance. For I deny not but ſome were annexed before, as to the Abbey of Crowland, and others; yet theſe were granted more by the Popes licence then the Princes authoritie. And then began the Schoolmen to entangle the right of tithes, and their curioſitie and their covetouſneſſe enabled them, and put them vpon it: for when vnder *Innocent* the third, they multiplyed into multitude, (as there were ſixteene orders ſet vp in that Century) and hee limited and leſſened their revenewes, they ſought to maintaine that by right which before they had obtained by wrong, and retained by protection and priviledge. Then began the contention betweene the Schoolmen and the Cannoniſts about the right of tithes; and I conceiue *Innocent* the third to be of the Canoniſts part, becauſe he was the firſt great advancer of them in the Church, and no free friend to the Friars. This I haue conceived by comparing Church hiſtories with the Cannon law, eſpecially Decretalls: theſe wrongs of the Clergie were ſo brought in and vpheld, ſo continued in our Kingdome till *Henry* the eighth of famous memorie; who either intending a reformation in religion, ſeiſed vpon the revenues of religious houſes; or ayming at their revenewes ſet vpon, rather then finiſhed a reformation, confiſcated them to his vſe, as eſcheated as their lands were, and ſeiſes vpon their appropriations which were not theirs; but morgaged as it were *in commendam* to them, and he poſſeſſed the Crowne of them, and ſold them to private men;

Flavius Chen. Compend. Bulla tom. 1. Paſchal.

which

which hold them by as much right as the Monasteries did, & no better. Though some would willingly perswade themselues that they hold them by as right and just law, as they doe any purchased inheritance; for they say, though they were once spirituall, yet now they are made temporall, & lay-fees by the lawes of dissolution; especially in the two and thirtieth of *Henry* the eighth. It is true that those statutes apply diverse law termes, (I will not call them meere law fictions) to those things that properly belong to temporall inheritances, and haue made them demandable by originall writs, and given order of conveyance, by deed, fine, and act of Parliament; which act, as it is bootelesse, so it is contumacie in any private subject to question: onely thus much I hope I may say without generall offence, since I conceiue it the truth, and yet not all the truth; I doe not yet vnderstand how that can bee made manifest to bee a free Parliament in that point. For I doe not beleeue, that the lower House did either propose, or generally approue it, though they assented to it. Neither doe I thinke, that King *Henry* the eight did freely propound it out of his owne choyce, but that the necessity of the present time did put him vpon it. And I hope he intended to call it in, if hee had lived. As *Dionysius* the King of *Syracusa* in *Italy*, when his treasure waxed too short for a great imployment: ἐκέλευσε ὅσα ἀναθήματα ἐν Ασκληπιείῳ Βέβηλα ἐπ' ἀγορᾶς πεπρᾶσθαι: hee commanded to take the treasures of *Asclepius* his temple, and to proclaime them to be sold in the market, as profane and common commodities, which the *Syracusans* were very eager to buy, because they had Church-bargaines. But when hee had gotten what his necessity required, he presently sent forth an edict, εἴ τις τι τῶν Αναθημάτων ἠργάσατο ἀποδιδόσθω τῷ Θεῷ, that if any one had bought those devoted treasures, they should againe restore them to the Church. This course had

Polyæn. in Strat. lib. 5.

had beene ſomewhat juſt, if hee had let them enjoy the treaſures, vntill they might haue regained by them what they coſt, (as perhaps moſt purchaſers of Impropriations haue.) But that which moſt hinders me from apprehending it to be a free pure act, is, becauſe the moſt actiue and ſpirituall part in Parliament, was pittifully paſsiue in it, it was at beſt mixt by reaction in the patient Clergie, who did neither abſolutely obey, nor reſolutely reſiſt, but ſilently ſuffer that to paſſe, which was not right; and therefore the act was not free from wrong. Neither doe many of the judicious ſages of our law ſo fully approue of it. Yea S^r *Francis Bacon* in his conſiderations of the Clergie of *England*, dedicated to King *Iames* of peaceable memory, confeſſes, that hee was of opinion, that all the Parliaments, ſince the twenty ſeventh, and thirtie one of *Henry* the eight, ſtand obnoxious and bound in conſcience to God, to doe ſomewhat for the Church, to reduce that patrimonie; or, that ſince they haue debarred the Church of her dowry, they ſhould make her a competent joynture. Which opinion of his, is more ingenious, in my apprehenſion, and advantageouſly pertinent than theirs, who onely enveigh againſt the Parliament, and *Henry* the eight the head and ruler of it: which act (admitting the neceſsity then that vrged him to vſe the power of Eccleſiaſticall dominion) is not altogether inexcuſable, (though this reformation did more wrong to the Clergie, than the conqueſt:) For what he was to do, was to be done in haſte; and in that routing-ruſh of reformation, who could expect but the part corrected, muſt needs be for the time, neere to vtter ruine; though happely, if the author of the reformation had lived to finiſh it, amends would haue beene made in ſome meaſure. But *Henry* the eight did rather put down the *Roman* Church, than ſet vp ours; as *Alexander* the great pulled downe the *Perſian* Monarchie, but ſet not vp the *Grecian*. But to

Conſideration 6.

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pull downe one was the onely way to set vp another; as *Aristotle* rooted out all the opinions of the former Philosophers, to set vp his owne; or as *Hypocrates*, who being their Βιβλιοφύλαξ παλαῖα τῶν Ἰατρῶν ἐνέπρησε Βίβλια (as *Zetzes* in his *Chiliads*) he burned the bookes of all the ancient Phisicians, to set vs his owne, or theirs as his. So that if a publick reformer begin once to alter, he must of necessity, for the time, stirre, if not remoue more than hee first intended, especially if hee be crossed and curbed by an adversary, that stands strongest by that part which needs reformation, and by that in it, which will best helpe him in the performing of it. For he that will prevaile against an incroaching enemy, that hath a party in his kingdome, must be sure with all apt industrie, to obserue and oppose him in his counsels, by bereaving him of his counsellers and agents, either by taking them away at once, or putting them as exiles from him, or pulling them to himselfe, which is the safest and honourablest course. Now the Pope, who was the absolute insolent adversary to *Henry* the eight, stood by the Monkish part of the Clergie, and chiefly by their rich revenues; and therefore, it behoved the King, either to reconcile them to himselfe, or vtterly to ruine them (as fell out because they rebelled.) And in the persecution of them, hee ranne a cleane contrary course to the Pope. As I remember, when *Cyrus* tooke *Babylon*, he drew *Euphrates* drie, and made all land; And *Xerxes* when he went against *Athens*, would haue made all sea, Ξέρξης τῶν πρόσω τὴν μὲν γῆν ἐποίησε θάλασσαν: So *Henry* the eight made all Lay and land, when hee intended to be free from the vsurpation of the Pope, and the Pope made all spirituall and his See, when hee aymed at his absolute vnrestrained extravigancie both in See and Scepter. This heat and height of opposition made the King proceed too farre, which, I beleeue, hee did somewhat perceiue, in that he did retract in some par-

Chil. 8. num. 155.

Dion. Chrysost. περὶ Βασ. γ.

particulars, from the first course: As in erecting some Episcopall Seats, and more Cathedrall Churches, out of the ruines of Monasteries and Priories. And in that hee made
33. Hen. 8. of the appropriation of *Royston*, a Parish-Church. And I presume, he might haue proceeded farther, if hee had not beene soone after cut off by death, and hindred by profane and sacrilegious instruments while he lived, who, I perswade my selfe, were the same men and meanes, that tried to procure the dissolution of the Bishoprick of *Durham* by act of Parliament, during the nonage of *Edward* the sixth. So that the vnhappinesse of *Henry* the eight, is, because men judge by the event, not knowing the intent (as
Iouius de Vir. illust. *Paulus Iouius* exclaimes of him.) In my minde, hee may be well paralelled with *Charles Martellus*, the Champion of the Church, who, when hee defended the Pope, was the first that was called *Christianissimus* among the *French* Kings, by *Gregory* the third; yet hee was the first that robbed the Clergie in *France*, by giving *Clientary*
Baronius Anno 759. tythes, which they call *feudall* to his followers: yea and hee deposed the Archbishop of *Reemes*, and disposed of the Bishoprick to one *Miloe Canaleire*. So *Henry* the eight had first the title of the Defender of the Faith, for
Bellarm. de script. Eccles. publishing a booke against *Luther*, which (*Bellarmine* saith) *Roffensis* wrote, and presently after fell foule vpon the Clergie. So that, (I beleeue) the Pope repented of the title, and was ready, not to giue him so good a title, as his predecessour *Iulius* the second gaue *Lewis* the twelfth of *France*, in his Bull, which *Guicciardine* notes to pro-
Guicc. hist. l. 11. ceed of malice, *Nella nominondolo, non piu Christianissimo, ma illustrissimo*. But let him be as bad as they will make him, yet I dare excuse him, as *Baronius* doth *Martellus*,
Guicc. Hypomn. Polit. 123. and say of him as *Guicciardine* said of the Popes, that hee was an honest man, because he was not more wicked than most men. I haue in this as farre as I am able with a good conscience, cleared our State from the forraine fame of sacri-

ſacriledge. But I cannot free particular men from it, which haue no pretence for what they detaine, or take from the Clergie, but onely that they are not convinced that there is ſuch a ſinne as ſacriledge; and that becauſe they hold not tythes due *iure divino*, and that becauſe they deſire ſtill to hold them by the law of the land. And that they may more colourably continue it, they hold no ſuch ſinne as Symonie, that the preſented may make a ſymonaicall contract, whereby they are confirmed and corroborated in their ſacrilegious vſurpations. But I will not diſpute the poynt, whether there be any ſuch ſinne as Symonie, in relation to a private preſentation without reſpect to orders taken with it. But I am ſure, none will deny, but where is a ſymonaicall contract, there is perjurie in the Inſtituted. As for ſacriledge, I grant it is not eaſie for men that are guilty of it, to be convinced that it is a ſinne. For ſinnes of omiſſion cannot ſo quickly and ſharply touch the conſcience, becauſe they are the breach of an affirmatiue law, which doth not ſo ſtrongly check the vice, as informe to the dutie; eſpecially when pleaſure or profit haue bribed the judgement. For I feare, ſome hold ſtolne tythes, the ſweeteſt part of their inheritance, as it is ſaid by the Epicures; οὗτοι πιόντες τὰ γλύκεα πάντα, τὸ μελὶ μεῤῥὸς δεκάτων ἐκαλέων Ἀμβροσίας: who doting vpon voluptuous ſweet delicates, called hony the tenth part of the *Ambroſia*; and perhaps that ſect ſet vp the trade of Bee-mongers in *Athens*, (as *Syneſius*) νὺν Ἀθῆναι ἔχον οἱ Μελιτουργοί. So I am afraid, the tickling ſweetneſſe of tythes, is the cauſe, why the ſmart and ſowrneſſe of ſacriledge is not felt, nor taſted. And therefore, in my opinion, *Thomas Aquinas* doth well, to make ſacriledge, *ſpeciem luxuriæ*; ſo that it may be a ſinne, and yet they never be convinced of it. I am ſure, not onely the ancient Fathers of the moſt pure primitiue Church, but even the godly Emperours did eſteeme it a ſinne, and that in a high degree, that when they

Zetzes hiſt. Chil. 7.

Syneſius epiſt. 136.

Thom. 2a. 2æ. q. 155. A. 10.

they granted generall pardons at Easter, and other ſolemne times, they excepted ſacrilegious perſons: As *Theodoſius* the great, *ob diem Paſchæ, quem intimo corde celebramus, quos reatus aſtringit, carcer includit, ſolvimus; attamen ſacrilegus maximè à communione iſtius munieris ſeparetur*: So alſo *Gratian* and *Valentinian*; *Religio anniverſariæ obſervationis hortatur, vt omnes periculo carceris, & à metu pœnarum eximi iubeamus: verùm eos excipimus, quos ſcelera graviora compulerunt, vt qui ſunt ſacrilegi & ſepulchri violatores.* So in many of the Novels; τῇ παρεχτῇ τῶν παλαιῶν, vpon Easter day ſet all perſons free μὴ τὶς ἱεροσυλὸς ἐστιν, but if any be guilty of ſacrilege, let him be kept ſtill in hold. So that you ſee, it was reckoned *inter extraordinaria crimina* in thoſe dayes; and ſo it would be thought with vs, if profit did not blinde the judgement in the payer of tythes, and indiſcreet covetouſneſſe leade many Clergy-men to make no diſtinction betwixt free and friendly compoſitions with a bountifull Patron and ſacriledge. In my poore judgement, the Canon Law is but juſt, in decreeing, that *Si patronus Laicus ad inopiam fuerit redactus*, hee muſt haue ſome competent ſuſtenance from the incumbent, eſpecially if he haue not beene ſacrilegious, and ſo by Gods judgement brought to it. And I doe conceiue, that this may be, notwithſtanding they doe not charge any parſonage with annuitie rents, which is prohibited by the ſtatute of *Elizab.* Thus it is plaine, that the revenues and maintenance of the Clergie are poſſeſſed by the Kings Lawes, and may be demanded as due by them.

Theod. tit. de Indulg. Crim.

Theod. eodem tit.

Harmenopulus Promp. Iur. Civ. l. 6. tit. 5.

Quicunque c. 6. q. de Iur. Patronatus.

23 *Eliz. c. 2.*

§. 5. The other part of the honour of the Clergie, annexed to the power of order, is in priviledges, & immunities, by which this power is exerciſed with more eaſe, delight, and reſpect; and, as it were, with the whole man without diſtraction. Now all the priviledges the Church doth enjoy or deſire, ariſe, and are raiſed by the Kings

Kings lawes, and royall prerogatiue. As that ancient-often-confirmed *Magna Charta* doth fully confirme all former priviledges of the Clergie. And that was then favour enough, for then they had priviledges to a ſurfeiting ſurpluſſage, but now the Clergie ſtands in more need of them, and they humbly expect them onely from the favour of their Prince, who hath a plenitude of power, to grant more and larger priviledges, than ever they will deſire. For all priviledges are granted in relation to ſome Law, and the power of an abſolute Prince is aboue all Lawes, (as *Dion Chryſoſtome* told juſt *Trajane*) Βασιλεὺς τῶν νομίων μείζων: or as the ſame Counſellour to the ſame Emperour, τῶν νομῶν Βασιλεὺς ἐπάνω: which *Cujacius* explaines and limits to coactiue correctiue Lawes, which *Dion* ſaith, began in *Auguſtus* dayes, ωηδένι τῶν πάλαι Ρωμαίων νομῶν ἐξώθη λελύσθαι: none of the ancient *Romans* were freed from lawes, τοτέρων ἐλεύθεροι ἀπὸ πάσης ἀναγκαίας νομίσεως εἶσι, that is from the neceſſity of obeying. And I doe beleeue, that the Scriptures (ſeeing that they ſay more for the right of Kings, than any booke in the world) doe, if not fully ſet downe this power, yet permit it with approbation in ſome caſes, eſpecially for the publick good of the Church, which, I am ſure, is a farre more conſcionable and commendable courſe, than to accommodate religion to ſerue the turne of the State (as that judicious *Amiratus* vpon *Tacitus*) *Biſogna accommodar la ragione di ſtato alla religione, & non la religione, alla ragione di ſtato.*

Magna Charta cap. 1.

Dion Chryſoſt. περὶ Βασιλείας γ. κ. τ.

Cujacius obſervat lib. 9. c. 11.

Dion hiſt l. 53.

Our King then being a moſt abſolute Monarch, hath this prerogatiue, and from that wee haue and hold our priviledges, not from that written prerogatiue, abſtracted out of *Fitzherberts* Abridgement, by S^r *William Stanford*, whereby the Kings Exchequer hath many priviledges, and peculiar proceſſes (as the Civilians call them *privilegia fiſci, fiſcus πρεσπερόγατιαν habet.*) But from an vnwritten vnreſtrained right of dominion, whereby he hath

Cujacius ob. ſe. v. l. 2. c. 24.

plenarie power, not onely to make legall propoſitions of validitie, or voyde in their firſt inſtitution, or to interpret them either by declaring them to bee corrected in ſome poyntes and caſes, eſpecially if hee correct them by a more particular expreſſe preſſing law, as hee may correct the law of nature by the law of nations; the law of nations, by the law of armes; the law of armes, by the law of particular Leagues; and all by the power of dominion: or reſtraine them in reſpect of ſome perſons, or publick ſocieties; but he may diſpence alſo with them, ſince ſome penall ſtatutes are made with relation to his power of pardon after the act; therefore it is not ſo much to exempt them from being obnoxious to the puniſhment, by pre-interpreting that it was not intended to extend to ſuch perſons; for ſo the priviledge is not againſt law, but beſides it, or aboue it. Yea there are ſtatutes diſpenſatorie; as that of the pluralitie, and non recidencie which the Archbiſhop of *Canterbury* limits by his approbation. And priviledges muſt neceſſarily bee where there are multitudes of ſtatutes, which be ſo ſtrict in point of injunction, as if the makers of them had not conſidered, that politique lawes muſt be made with reſpect to morall poſſibilitie, as what men may doe; and yet the puniſhment of their tranſgreſſion is not expreſſed, but left to the pleaſure or diſpleaſure of the King. But theſe are not the priviledges that the Kings royall prerogatiue doth grant, as immunities and impunities, for then the lawes ſhould bee onely punitiue, if there were onely vſe of protections and pardons: but as lawes are alſo remuneratiue, ſo Princes haue power to reward after a priviledging manner, and chiefly in our Kingdome, where it ſeemes to be on purpoſe omitted by the written lawes, and left to the Kings pleaſure and power; eſpecially concerning Eccleſiaſticall perſons, who haue moſt neede of them, and may now as freely enjoy them as any other perſons. For though heretofore

Eccl. Anglicana Canon. 41.

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it was prejudiciall to our Kings to grant priviledges to all Eccleſiaſticall perſons, when they were ſo encreaſed in multitudes, and overgrowne in magnitude for the whole Kingdome, and the Popes would confirme them as irrevocable: yet now they are but few in number and ſmall in power, and the King may call them in when hee pleaſes. This want of theſe priviledges hath beene the cauſe of much evill in the Church, and the more they are impeached by thoſe that profeſſe themſelues the maintainers of the Kings peace, lawes, and royall prerogatiue, the more will the ſtate Eccleſiaſticall runne to ruine. And they are much infringed in our Vniverſities, which I am forced to complaine of, with feare, leſt that fall out which happened to the Vniverſitie of *Prague*; which was vtterly ruined by *Charles* the fift, taking the priviledges away at *Don Lewis* deſire. Whereas *Francis* the firſt of *France* fearing and favouring the Vniverſitie of *Paris*, reſtored all the priviledges which *Lewis* the eleventh had taken away vpon a juſt ground of ſedition, which hath made it to reviue and flouriſh ever ſince. But there are ſome politiques that hold it a needleſſe thing, to bee any way indulgent to ſilly Schollers, as *Cujacius* ſaith out of *Galen*, that they expreſſed weake men vnder the title of *ſcholaſtici*: they make meere ἀρτίδες, Iohn a noakes of them, but the fault is in themſelues according to the *French* Proverbe, *Qui ſe fait brebis le leup la mange*: For though the Clergie bee weake of it ſelfe, and tempt the contemners of it to over-top and over-turne it: Yet ſince we haue a pious prudent Prince, that is royally ready vpon the firſt appeale to protect and relieue his poore Clergie: we are not to be pittied, if we neglect to implore his ſupreame aſſiſtance. And thus it is ſomething evident how the honour of the Clergie annexed to the power of order, is granted and ſuſtained by the Kings lawes and

Dinothus Adcer. hiſt. cent 7.

Cujacius in ſent. Pauli lib. 1. tit. 12.

royall prerogatiue. I muſt now in briefe ſhew the like of the honour annexed to the power of juriſdiction.

§ 6 The power of juriſdiction which I doe here intend, is not that deligated power which is in Biſhops, Vicars, or Officialls; nor that power Archdeacons and Deanes enjoy, either by cuſtome or priviledge: but that ordinary power which is in Biſhops. To this power of juriſdiction there is honour annexed by the lawes of this land, and the Kings royall prerogatiue: which I divide as before, into revenewes ordinary, and priviledges; the revenewes are their temporalls, and part of the perquiſits, called the *Cenſus Cathedraticus*: the firſt of which are given and granted by the Kings royall bounty, & confirmed by the lawes; the other are ſet downe and approved by the ſame lawes. Biſhops temporalls are annexed to their ſees by the Kings gift, and are as it were their Gleab, but are indeed their Baronies which they hold of the King *in capite*, and performe ſervices for them; and therefore they are as it were wards to the King during the vacancie: *quæ ratione Baroniæ* (as *Linwood*) *ad Epiſcopum ſpectare poſſunt, Dominus Rex cuſtodiam habet*; (as *Duarenus* ſayes of the Kings of *France*) *Princeps quam diu vacat Epiſcopalis ſedes, feudorum lege, prædiorum omnium adminiſtrationem ſuſcipit*. But theſe temporalls are not to be reſtored till conſecration, and ſo ſeeme to be annexed to the power of order in Biſhops; for their conſecration (according to the ſcholaſticall Canoniſts) is but *perfectio characteris*, which they at firſt received when they tooke the order of Prieſthood, and ſo ſeeme not properly annexed to the power of juriſdiction: for before conſecration, vpon election and confirmation they may exerciſe the power of juriſdiction, though not of order. *Epiſcopus electus & confirmatus poteſt exercere quæ ſunt juriſdictionis, non quæ ſunt ordinis Epiſcopalis ante conſecrationem*, (as *Othobone* vpon *Linwood*)

Stanford prerogat. cap. 1.

Linwood de immunitatib. Eccleſia.

Duarenus de beneficijs. l. 3. c. 11.

Auguſtinus de Ancona de poteſt. P. P. quæſt. 22. Art. 9.

Panormitan. in Decret. Ver. Conſ. §. 6.

Linwood) *ſuſpendere poteſt à beneficio, non ab officio; quia ab officio ſuſpendere, eſt à poteſtate ordinis ordinaria.* But Iuſtice *Glanvil* ſeemes to intimate that they were reſtored, when they were but Lords elect, becauſe *electi ante conſecrationem homagia ſua facere ſolent*, but whether it were *de jure* or *de gratia* (as the learned in the Common law diſtinguiſh,) I leaue to them to determine; and thinke it great happineſſe for the Biſhops, and the great honour of our moderne Kings, that they are ſo fully reſtored at all, ſince they haue as much power, and may pretend as much reaſon to ſeiſe the temporalls into their hands as well as others. ---- But our Royall Soveraignes pious Father, ſet a good example to his Majeſtie to follow; for in the firſt yeare of his raigne hee enacted a ſtatute to prevent all diminution of Epiſcopall revenewes, though it were to alienate them to the vſe of his Crowne: yea though it were but in exchange for impropriations, (a courſe which was too common in Queene *Elizabeths* dayes,) inſteed whereof our Kings haue out of royall indulgence given ſome licences for Mortmaines. If this redreſſe had come before they had beene too much impaired: Biſhops would not haue deſired ſo many Commendams, nor Rectors of Pariſhes made vſe of the ſtatute of pluralitie. To their revenewes in theſe temporalls, there are many honourable priviledges annexed, as they are Barones; So that Biſhops haue the priviledges of Barons in the Parliament, and that vpon good ground, ſince they hold of the King, and performe the ſervices belonging to them; (as *Mathew Paris*) *Epiſcopi de rege tenent in capite Baronias, & faciunt omnes conſuetudines regis, & ſicut ceteri Barones debent intereſſe iudiciis regis cum Baronibus.* Now the Biſhops (eſpecially ſince the reformation) are ready and willing, not onely to take the oath of homage, which ſome denyed heretofore, as *Thomas Becket*, and

Linwood lib. 1. de conſtit. 12. *Glanvil lib. 9. cap. 10.*

1. Iacobi. c. 3.

Mathew Paris. Hen. 2. p. 120.

and *Glanvill*, who was the chiefe Iuſtice, ſeemes to countenance it, by ſaying *Epiſcopi conſecrati non ſolent Domino Regi homagium facere de Baroniis ſuis, ſed fidelitatem.* The preſent Clergy I ſay is not onely ready to take the oath in the old favourable free forme, [*ſalvo ordine,*] but as it is now more ſtrictly obligatorie by putting in theſe words, [*in verbo veritatis;*] and leaving out the former. Which oath may be taken without any ſuſpicion of Symonie, (as *Panormitan*) *Homagium, vel fidelitas ab Epiſcopo præſtari poſſit, citra periculum Symoniæ*: and *Cajetaine* the learned ſchooleman doth in this agree with this ancient able Cannoniſt; *Epiſcopus legitimè iurare poteſt Homagium quoddam vel fidelitatem, quia nil in iſto iuramento continetur, circa curam animarum*; for that is taken in relation to their temporalls which they haue from the Kings favours; not in relation to their conſecration, which they haue from the qualifying grace of God, which was well expreſſed anciently in their ſtile [*Dei gratiâ Epiſcopus*] and now by [*providentia divinâ,*] ſo that ſeeing they perform the ſame ſervices, they may enjoy the ſame priviledges with the Barons. Now as all priviledges, ſo theſe that they enjoy common with them, are beſides and aboue the common courſe of law. For inſtance, as they are Aſſeſſors in Parliament, they may appeare by Proxie; as they are witneſſes, they may ſweare onely *Viſis Evangeliis, verbo ſacerdotis*; as Barons, by their honour; and when they are at any time Delinquents, they ſhould bee tried by their Peeres, (if they were tried as Biſhops, and not firſt degraded;) and ſo ſome haue beene tried, vntill one appealed from them to the Pope. And good reaſon in thoſe dayes they had, (if not now) to bee ſo tried, becauſe many of the Biſhops of thoſe times were of the Princes of the nobilitie; (as may be ſeene in Biſhop *Godwins* Catalogue of Biſhops:) ſo that when Peeres were Biſhops, why ſhould not Biſhops

Glanvil. lib. 9. cap. 1.

Cajetan in ſecund. ſecundæ. q. 184. art. 5.

ſhops bee Peeres. It ſeemes in *Richard* the ſeconds dayes they were ſo accounted, for when hee did make vp the number of the twelue Peeres of the land, he choſe *Brentingham* Biſhop of *Exeter* one of them, which (I conceiue) hee would not haue done if hee had not beene a Peere before: and I am the rather perſwaded ſo to thinke, becauſe *Richard* the ſecond extends the ſtatute of *Scandalum magnatum*, to Biſhops as well as Dukes, Earles and Barons vnder the title of Peeres of the land. Beſides theſe priviledges which they haue as they are Barons, the Kings of this land haue beene pleaſed out of their Princely favours to beſtow many freedomes vpon them, eſpecially on the Archbiſhop of *Canterbury* as amongſt other ordinary and knowne, one againſt his Majeſties written prerogatiue, as that the land held of that Biſhop ſhall not be Ward to the King. And I beleeue the high eſtimation of that See abroad might mooue them to it, for they are not onely ſtiled Primates of all *England*, and Metropolitans, but Patriarches; *Patriarchæ minorum gentium ſunt Cantuarienſis, Aquilienſis, Biturgienſis, & Gradenſis*, and the moſt lawfull Legats of the Apoſtolicall See: *Legati nati dignitas Archiepiſcopatui Cantuarienſi, Remenſi, Eboracenſi, & Piſano annexa eſt.* This forraine reſpect might mooue them more particularly to honour them, though they haue alwayes moſt highly favoured Biſhops in generall, in ſomuch, that they haue made them not onely *à ſacris*, but *à ſecretis*, which is ſafe for a King, and no diſtraction to a Biſhop in his calling; with *Lipſius* limitation *intereſſe eos poſſe imò debere, ſed raroenter cum de rebus planè ſeriis agitur, & quæ tangunt vniverſum ſtatum*; then ſhould not Princes need to forbid Biſhops the Court without they were ſent for, (as *Baronius* ſaith, *Iuſtinian* was faine to doe). Thus I haue brifely diſcourſed, though not fully diſcovered ſome thing of the relation betwixt the ſtate

2. *Rich.* 2. c. 5.

Stamford. prarogat. cap. 1.

Duarenus de gradibus Epiſc. cap. 9.

Lalius Zecch. de ſtatu Legat.

Lipſius Annot. in 3. *polit.*

Baron. Annal. 3 *Anno* 528.

Eccleſiaſticall and the Civill; which I haue done without adviſing in any thing to an alteration, or deviſing any thing for innovation; and with ſubmiſſion to the licence of authority and the judgement of the learned.

* * *

FINIS.